92-1418

No. _____

Supreme Court, U.S.
FILED
MAR 1 1993
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

SANDPIPER MOBILE VILLAGE,
a Limited Partnership, Petitioner

vs.

THE CITY OF CARPINTERIA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SECOND APPELLATE DISTRICT, DIVISION SIX, COURT OF APPEAL FOR THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

ROBERT J. JAGIELLO, ESQUIRE
P.O. Box 879
26620 Kings Court
Lake Arrowhead, CA 92352
(909) 336-5345

Attorney for Petitioner,
Sandpiper Mobile Village,
a Limited Partnership

Lorraine Mitchell Legal Briefs

732 E. WASHINGTON BOULEVARD
LOS ANGELES, CALIFORNIA 90021-3088
(213) 747-5631 • FAX (213) 747-5843

CONTENTS REPRODUCED FROM FURNISHED PRETYPED COPY

QUESTIONS PRESENTED

1. After an adverse decision by this Court in Yee v. City of Escondido (1990) 224 Cal.App.3d 1349, 274 Cal.Rptr. 551, in which this Court suggested that the California courts address (the regulatory taking issue in the first instance), whether the California Court of Appeals and Supreme Court decision upholding a city Ordinance imposing rent control in a mobilehome park setting without vacancy decontrol, which causes a transfer of a premium value to the departing mobilehome tenant at the time of sale, against a challenge that it constitutes a regulatory taking is error.

2. Is there a violation of substantive due process under local rent controls for mobilehome parks, which do not provide for vacancy decontrol, where the effect of the ordinance is to merely

transfer the value of the right to occupy at a reduced rate from the parkowner to the departing tenant, and in no way protects the present tenants in their tenancy from rent increases or decreases, and increases the cost to incoming tenants by the amount of the "premium" paid by said tenant to the departing tenant for the right to occupy at a reduced rate?

LIST OF PARTIES

The caption of the case contains the names of all parties to the proceedings in the state court.

TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	i
LIST OF PARTIES	iii
INDEX TO APPENDIX	ix
TABLE OF AUTHORITIES	x
OPINIONS BELOW	2
JURISDICTION	3
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	4
California Constitution	4
The Carpinteria Ordinance	5
California Statutes	6
STATEMENT OF CASE	7
PROCEDURAL BACKGROUND AND HOW THE FEDERAL QUESTIONS AROSE	7
The Complaint	7
Subsequent Proceedings at Trial Court Level	8
The Appeal	9

I. THE STATE COURT OF APPEAL DECISION, THAT THE FORCED TRANSFER OF THE "PREMIUM VALUE" FROM LANDLORD TO TENANT, WHICH PREMIUM REPRESENTS THE RIGHT TO OCCUPY THE SPACE AT REDUCED RENT, DOES NOT CONSTITUTE A TAKING, IS IN ERROR. 11

A. THE GOVERNMENTAL REGULATION OF PROPERTY RIGHTS MUST SUBSTANTIALLY ADVANCE A LEGITIMATE STATE INTEREST; OTHERWISE, THE REGULATION CONSTITUTES A TAKING. 11

B. THERE IS NO LEGITIMATE GOVERNMENTAL INTEREST SERVED BY THE VACANCY CONTROL PORTION OF THIS STATUTE. 12

1. The Transfer of the Right From The Appellant To The Tenants To Receive Compensation For Selling The Right to Occupy in Perpetuity at Reduced Rates Does Not Serve a Legitimate Governmental Interest. 13

2. The Alleged Purpose of Protecting a Tenant's Investment in a Depreciating Mobilehome By Creating for the Tenants an Alienable Interest in Appellant's Land to Make Up for the Loss Experienced by Way of Depreciation is Not a Legitimate Governmental Interest. 15

a. It is Not Possible to Stop a Wasting Asset From Depreciating. 15

b. There is No More "Investment" in a Used Coach than There is in a Used Car. 16

(1) Mobilehomes Depreciate. 16

(2) Loss of Value of a Depreciating Coach Should Fall on the Coach Owner and Not the Parkowner. 17

C. THIS ORDINANCE DOES NOT SUBSTANTIALLY ADVANCE A LEGITIMATE GOVERNMENTAL INTEREST. 19

1. The Purpose is Not Public. 19

2. The Purpose of Preserving Low and Moderate Income Housing Opportunities is Not Served By Vacancy Control. 20

3. Vacancy Control Overburdens Park Owners and Does Not Substantially Advance the Governmental Purpose of Protecting Present or Prospective Tenants Against Predatory Landlords or Forced Sales at Distressed Prices. 21

a. The Carpinteria Ordinance Does Not Protect Prospective Purchasers. 22

b. The Ordinance Assumes the Existence of Predatory Landlords, a Question of Fact Which Remains to be Decided and Will Not Withstand Analysis. 22

4. There Are Other Remedies. 23

5. The Ordinance Does Not Substantially Advance the Posited Governmental Purpose of Protecting the Tenant's Investment in a Wasting Asset in That it Lacks the Requisite "Close Fit" to Satisfy Constitutional Standards. 24

(a) The Conduct of the Landlord is Unrelated to the Decline of a Depreciating Personal Asset. 24

(b) The Ordinance Works an Unduly Oppressive Result Upon the Landowner by Creating Estates in Land to Protect Against an Occasional (And Hypothetical Predatory Landlord. 26

II. THE WHOLESALE TRANSFER BY REGULATION OF THE PARKOWNER'S RIGHTS IS A REGULATORY TAKING UNDER TRADITIONAL REGULATORY TAKINGS ANALYSIS. 28

A. THE CHARACTER OF THE GOVERNMENTAL ACTION IS TO CREATE AN ALIENABLE ESTATE IN THE PARKOWNER'S LAND ON BEHALF OF TENANTS WHICH SLICES THROUGH THE ENTIRE BUNDLE OF RIGHTS OF USE, POSSESSION AND DISPOSITION. 28

Use of the Property is Lost. 29

Possession is Lost. 30

The Right of Disposition Has Been Lost. 30

B. THE ECONOMIC IMPACT OF THE ORDINANCE IS A FORCED TRANSFER TO THE TENANTS COLLECTIVELY OF, AMONG OTHER PROPERTY INTERESTS, ALL THE APPRECIATION IN THE LAND FROM TIME OF THE PASSAGE OF THE ORDINANCE UNTIL SALE OF OF A COACH, AND ALL THE APPRECIATION OF THE POTENTIAL OF THE LAND FROM THE TIME OF SALE TO INFINITY. 31

C. INVESTMENT BACKED EXPECTATIONS, BASED IN SUBSTANTIAL PART ON APPRECIATION AS A COMPONENT OF RETURN, ARE EVISCERATED BY THE TRANSFER OF ALL APPRECIATION TO TENANTS. 32

III. THE ORDINANCE FAILS TO SATISFY SUBSTANTIVE DUE PROCESS IN THAT: (1) IT DOES NOT SERVE A VALID PUBLIC PURPOSE; (2) THE MEANS CHOSEN TO ACCOMPLISH THE DECLARED ENDS ARE NOT REASONABLY NECESSARY; AND (3) THE ORDINANCE WORKS AN UNDULY OPPRESSIVE RESULT UPON A MINORITY OF LANDOWNERS IN THE CITY OF CARPINTERIA. 33

A. THE MEANS CHOSEN TO ACCOMPLISH THE DECLARED ENDS ARE NOT REASONABLY NECESSARY AND WORK AN UNDULY OPPRESSIVE RESULT UPON APPELLANT. 34

WHY THIS WRIT SHOULD BE GRANTED. 35
IN CONCLUSION 36

INDEX TO APPENDIX

A. OPINION of the Court of Appeal, Second Appellate District, Division Six, filed October 15, 1992.

B. ORDER of the California Supreme Court In Bank denying Petition for Review, filed February 11, 1993.

C. REMITTITUR NOTICE of the Court of Appeal of the State of California For the Second Appellate District, Division Six, filed February 16, 1993.

D. ORDER of the Superior Court of the State of California for the County Santa Barbara, granting judgment on the pleadings, filed March 19, 1991.

E. City of Carpinteria ORDINANCE No. 371 (EXCERPTS).

F. California Mobilehome Residency Laws (Cal. Civ. Code §§ 798 et seq.) (EXCERPTS)

TABLE OF AUTHORITIES

CASES	PAGE
Agins v. Tiburon, 447 U.S. 255 (1980)	26
Armstrong v. United States, 364 U.S. 40 (1960)	25
Calder v. Bull, 3 U.S. (3 Dall.) 386, 1 L.Ed. 648 (1798)	13
Chastleton v. Sinclair, 264 U.S. 542 (1924)	20
Cleburne v. Cleburne Living Center, 413 U.S. 432 (1985)	34
Goldblatt v. Hempstead, 369 U.S. 590 (1962)	18, 23, 35
Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984)	13
Lawton v. Steele, 152 U.S. 133 (1894)	27, 35
Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982)	29
Moore v. East Cleveland, 431 U.S. 494 (1977)	34
Nollan v. California Coastal Comm. (1987) 483 U.S. 825	11, 12, 13, 15, 19, 25, 26, 28
Penn Central v. New York City, 438 U.S. 104 (1978)	28, 29

Pennell v. City of San Jose,
485 U.S. 1 (1988) 14, 34

Pennsylvania Coal Co. v. Mahon,
260 U.S. 393 (1922) 18, 29

Ruckelshaus v. Monsanto Company,
467 U.S. 986 (1984) 32

United States v. General Motors Corp.,
323 U.S. 373 (1945) 29

Yee v. City of Escondido (1990) 224
Cal.App.3d 1349, 274 Cal.Rptr. 551 9

STATUTES

Fifth Amendment to the U.S.
Constitution 4, 9, 10, 25

Fourteenth Amendment to the U.S.
Constitution 10

California Constitution,
Article I, Sec. 19 4, 10

California Mobilehome Residency
Law (Cal. Civ. Code §§ 798 et seq.) 6

City of Carpinteria Ordinance No.
371 5, 21, 22

California Code of Civil Procedure,
§1036 8

TREATISES

Hirsch & Hirsch, Legal-Economic Analysis
of Rent controls in a Mobilehome Context:
Placement Values and Vacancy Decontrol,
35 UCLA L.Rev. 399 (1988) 16, 17, 20 22

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

SANDPIPER MOBILE VILLAGE,
a Limited Partnership, Petitioner

vs.

THE CITY OF CARPINTERIA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE SECOND APPELLATE DISTRICT, DIVISION SIX, COURT OF APPEAL FOR THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

Petitioner, SANDPIPER MOBILE VILLAGE, a Limited Partnership, prays that a writ of certiorari issue to review the decision and judgment of the Second Appellate District, Division Six, Court of Appeals for the State of California, filed on October 15, 1992, in the case of Sandpiper Mobile Village v. City of Carpinteria, 2nd Civ. App. B-058435. A timely petition for the discretionary review

of the Supreme Court of the State of California was denied on February 11, 1993.

OPINIONS BELOW

The decision of the Second Appellate District, Division Six, Court of Appeal for the State of California, whose Judgment is here sought to be reviewed, was issued on October 15, 1992, and is reported at 10 Cal.App.4d 542, 12 Cal.Rptr.2d 623 (1992), a copy of which appears in Appendix A to this Petition.

The discretionary review of the California Supreme Court was sought by Petitioner, and denied on February 11, 1993. A copy of the Order of the California Supreme Court denying the Petition for Review in this case appears in Appendix B to this Petition, and Remittitur Notice was issued on February 16, 1993, finalizing the decision, a copy of which appears in Appendix C to this Petition.

The Superior Court of the State of California for the County of Santa Barbara, dismissed said case pursuant to a Motion for Judgment on the Pleadings, filed by the defendant City on or about November 12, 1990, issuing its ruling by Minute Order, and an Order Granting Judgment on the Pleadings was entered on March 19, 1991. A copy of this court's Order is located in Appendix D to this Petition.

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. Sec. 1257. The action of the California Supreme Court on the timely Petition for Discretionary Review resulting in a denial of said review on or about February 11, 1993, forms the basis for this Petition.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the U.S. Constitution provides in pertinent part:

> No person shall . . . be deprived of . . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

California Constitution

The California Constitution, Article I, Sec. 19, provides:

> Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to

the owner of money determined by the court to be the probable amount of just compensation.

The Carpinteria Ordinance

On or about April of 1985, the City of Carpinteria passed a rent control Ordinance, incorporating prior Ordinances, a copy of which Ordinance was attached to Petitioner's Complaint, and a copy of which appears in Appendix E to this Petition. The Ordinance became effective as to the Petitioner after the City annexed the property upon which the mobilehome park was located in 1987. The Ordinance precludes spaces rental increases at the time of the sale or transfer of a mobilehome located within the park. The Ordinance has been amended several times since first enacted, and was specifically amended to apply to annexed mobilehome parks on October 26, 1987. The most recent

amendment to the Ordinance occurred on August 28, 1989.

This restriction on rent increases at the time of transfer of ownership of a mobilehome park remaining in place in a park is referred to as "vacancy control."

California Statutes

The California Mobilehome Residency Law (Cal. Civ. Code §§ 798 et seq.), specifically §§ 798.55, 798.56 & 798.74, protect tenants from eviction from a mobilehome park and require the approval of a purchaser of a mobilehome that will remain in the park if the purchaser has the financial ability to pay the rent and does not have a prior tenancy history indicating he or she will not comply with the rules and regulations of the park. (Pertinent portions of Cal. Civ. Code §§ 798 et seq. are set forth in Appendix F to this Petition).

STATEMENT OF CASE

This Petition seeks review of the California Court of Appeal, Second Appellate District, Division Six's Opinion denying an unconstitutional regulatory taking of property results from vacancy control in mobilehome park rent control ordinances, and further denied Petitioner's claim that the Ordinance violated substantive due process.

PROCEDURAL BACKGROUND

AND HOW THE FEDERAL QUESTIONS AROSE

The Complaint

The Petitioner filed suit in Santa Barbara County Superior Court on or about July 21, 1989, challenging the constitutionality of City of Carpinteria's mobilehome rent control Ordinance on the basis that the inability of the plaintiff parkowner to raise rents on a space at the time a mobilehome is sold in-place effects a taking of property by allowing the

outgoing tenant to sell along with his or her trailer the right to occupy the space at less than market rents, for which a quantifiable premium is received by the outgoing tenant representing the value of the right to occupy and for which the landlord parkowner receives nothing. The Complaint sought compensation for the alleged taking under California State Constitution, Article 1, Section 19. Plaintiff also sought declaratory and injunctive relief against further enforcement of the Ordinance, attorney's fees under California Code of Civil Procedure, §1036. (Comp. Santa Barbara Superior Court Case No. 177809).

Subsequent Proceedings at Trial Court Level

After an unsuccessful demurrer and motion to strike, the City of Carpinteria filed its Answer to the Complaint on or

about December 29, 1989. The case proceeded with discovery and was "at issue" when the California Fourth Appellate District, Division One, filed its decision on October 31, 1990, in the case of Yee v. City of Escondido (1990) 224 Cal.App.3d 1349, 274 Cal.Rptr. 551.

Thereafter the City filed and served its Motion for Judgment on the Pleadings which was ultimately granted as aforesaid.

The Appeal

Petitioner timely appealed the adverse judgment to the Second Appellate District Court of Appeals of the State of California. On appeal, the appellate court, after decision by the United States Supreme Court in Yee v. City of Escondido, (1990) 224 Cal.App.3d 1349, 274 Cal.Rptr. 551, permitted rebriefing to argue the issue of regulatory taking and violation of substantive due process under the Fifth and

Fourteenth Amendments to the United States Constitution. Petitioner argued that the effect of the rent control Ordinance with vacancy control was an unconstitutional taking under both the California Constitution and the Fifth and Fourteenth Amendments to the United States Constitution and that this taking was a regulatory taking, and at one and the same time further violated the substantive due process requirements of the Fourteenth Amendment.

I.

THE STATE COURT OF APPEAL DECISION, THAT THE FORCED TRANSFER OF THE "PREMIUM VALUE" FROM LANDLORD TO TENANT, WHICH PREMIUM REPRESENTS THE RIGHT TO OCCUPY THE SPACE AT REDUCED RENT, DOES NOT CONSTITUTE A TAKING, IS IN ERROR.

A. THE GOVERNMENTAL REGULATION OF PROPERTY RIGHTS MUST SUBSTANTIALLY ADVANCE A LEGITIMATE STATE INTEREST; OTHERWISE, THE REGULATION CONSTITUTES A TAKING.

> We have required that the regulation "substantially advance" the "legitimate state interest" sought to be achieved, not that "the State 'could rationally have decided' the measure adopted might achieve the State's objective."

Nollan v. California Coastal Comm. (1987), 483 U.S. 825, 835, fn. 3 (internal citations omitted; emphasis in original).

The substantial advancement test is more than a pleading requirement. (Nollan, supra, 483 U.S. at 841). It means, at the least, that as a matter of fact the Ordinance substantially advance the end intended, not that some hypothetical legislator can posit a scenario in which it might accomplish the stated purpose.

B. THERE IS NO LEGITIMATE GOVERNMENTAL INTEREST SERVED BY THE VACANCY CONTROL PORTION OF THIS STATUTE.

The vacancy control provisions of the Ordinance serve no legitimate governmental interest. To the extent that rents are not allowed to be raised at the time of the sale of a coach, the logic of a rent control scheme within the context of a mobilehome park setting demonstrates that there are three potential justifications: (1) to preserve low and moderate housing opportunities; (2) to protect the tenant's

investment in a depreciating asset; (3) to protect the tenant from "distress sales" caused by rent gouging.

1. The Transfer Of The Right From The Appellant To The Tenants To Receive Compensation For Selling The Right to Occupy in Perpetuity at Reduced Rates Does Not Serve a Legitimate Governmental Interest.

In a string of consistent decisions, the Court has held in effect that it is illegal to take from A to give to B. Calder v. Bull, 3 U.S. (3 Dall.) 386, 388, 1 L.Ed. 648 (1798), Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984).

This massive, gratuitous, transfer of wealth from parkowners to tenants without compensation to the parkowners is precisely a demonstration of that kind of "out and out plan of extortion" condemned in Nollan v. California Coastal Comm., 107 S.Ct. at 3148.

As the dissent recognized in Pennell v. City of San Jose, 485 U.S. 1 (1988):

> The politically attractive feature of regulation is not that it permits wealth transfers to be achieved that could not be achieved otherwise; but rather that it permits them to be achieved "off budget", with relative invisibility and thus relative immunity from normal democratic processes.

Pennell, supra, 485 U.S. 1, 22 (1988).

The wholesale transfer of the parkowner's rights to tenants in this case goes "beyond the verge of the law" and constitutes a taking.

2. The Alleged Purpose of Protecting a Tenant's Investment in a Depreciating Mobilehome by Creating for the Tenants an Alienable Interest in Appellant's Land to Make Up for the Loss Experienced by Way of Depreciation is Not a Legitimate Governmental Interest.

a. It is Not Possible to Stop A Wasting Asset From Depreciating.

Appellant is prepared to prove at trial, through the use of expert testimony, that the coaches, which are wasting assets, inevitably must depreciate in value. Since the Nollan test is that a given governmental regulation must "substantially advance a legitimate governmental purpose," the underlying assumption has to be that the purpose can actually be achieved. It is not economically possible to eliminate depreciation of a wasting asset, thus, the goal cannot be achieved. The claim that

the Ordinance is protecting the tenant's "investment" is nothing but a disguised call for expropriation of the underlying land values to compel the parkowner to act as an insurer, to insure that the tenant will recover every dollar that the tenant put into an unwise investment choice, i.e., a depreciating asset.

b. <u>There Is No More "Investment" in a Used Coach than There is in a Used Car</u>.

(1) <u>Mobilehomes Depreciate</u>.

What the City Ordinance seeks to accomplish is to reverse the law of economics with respect to personal property and somehow protect an alleged "investment" in an asset that depreciates year by year.

An observation by Hirsch[1] that mobilehomes depreciate with age simply

---

[1] Hirsch & Hirsch, <u>Legal-Economic Analysis of Rent Controls in a Mobilehome Context: Placement Values and Vacancy Decontrol</u>, 35 UCLA L.Rev. 399 (1988)

confirms the inescapable economic conclusion--personal property (except for collectibles) is a wasting asset that depreciates with age.

While mobilehomes, in place in a park, can frequently rise in price, they do so as Hirsch notes, "due to the rising value of the landlord's property."

Coaches do not increase in price over time, but land appreciates, and:

> [W]hen rent controls are imposed, the value of coaches owned by sitting tenants increases. This increase results from the capitalization of the rent control ordinance which has reduced pad rents for the foreseeable future.

Supra, 35 U.C.L.A. L.Rev. 399, at 425.

(2) Loss of Value of a Depreciating Coach Should Fall on the Coach Owner and Not the Parkowner.

As recognized by J. Holmes:

> In general it is not plain that a man's misfortunes or necessities will justify his shifting the damages to his neighbor's shoulders . . .
>
> The question at bottom is upon whom the loss . . . should fall.

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 416 (1922).

Here the conduct of the parkowner is unrelated to the depreciation being experienced by the coach. There is simply no basis for imposing upon the parkowner the obligation to cure a problem for which the parkowner is not responsible.

Only those burdens caused by some aspect of property or its use can be allocated fairly to the owner. By the rationale of the harms test, when the property itself causes harm, regulation may be undertaken to ameliorate the harm caused. (See Goldblatt v. Hempstead, 369 U.S. 590, 594-95 (1962)).

C. THIS ORDINANCE DOES NOT SUBSTANTIALLY ADVANCE A LEGITIMATE GOVERNMENTAL INTEREST.

1. The Purpose is Not Public:

The only people who benefit under the rent control Ordinance to the extent that it prohibits vacancy decontrol, are those residents present in the mobilehome park at the time that the Ordinance is enacted. The purpose of the legislation is, thus, a private purpose.

Within the taking context, any exercise of the police power must "substantially advance" a legitimate state interest. (Nollan and Keystone Coal, cited supra).

There must be a close fit between the measure's objective and the means chosen to implement it. When there is a lack of nexus between the condition imposed and the purpose of the legislation, it will be

constitutionally deficient. (Nollan, supra, 483 U.S. 825, 834-37.

2. The Purpose of Preserving Low and Moderate Income Housing Opportunities is Not Served by Vacancy Control.

The Court will look beyond the legislative reference to its purpose, and determine if the purpose is actually served. (See Chastleton v. Sinclair, 264 U.S. 542 (1924)).

Hirsch opined that the actual cost of occupancy to the incoming tenant could be more than it would be under free market conditions or with the existence of vacancy decontrol. (Supra, 35 U.C.L.A. L.Rev. 399, at 448, and fn. 140).

3. Vacancy Control Overburdens Park Owners and Does Not Substantially Advance the Governmental Purpose of Protecting Present or Prospective Tenants Against Predatory Landlords or Forced Sales at Distressed Prices.

The operative effect of the Carpinteria Ordinance can be written thusly:

In order to protect some present tenants against rent gouging by some parkowners which would reduce the sales price of their coach below Blue Book value, all tenants are hereby given a possessory estate in their respective pads which they can sell for a multiple of the worth of their coach, and thereafter forever burden the space with the additional cost of the premium value thus received by the departing tenant.

a. The Carpinteria Ordinance Does Not Protect Prospective Purchasers.

The evil against which the Ordinance presumably protects is the gouging of some tenants by some parkowners. The Ordinance does nothing, however, to prevent price gouging by present tenants to the harm and disadvantage of incoming tenants.

b. The Ordinance Assumes the Existence of Predatory Landlords, a Question of Fact Which Remains to be Decided and Will Not Withstand Analysis.

While there are anecdotal speculations on the subject, the only economic analysis of the actual operation of rent controls in a mobilehome context is that conducted by the authors Hirsch, supra.

In that study, which examined 40 California cities, and included information on over 344 coach sales of which 40% were located in municipalities covered by rent

control, the authors examined the phenomenon of "placement value." Placement value is the excess of the sales price of a coach on the pad over the combined cost of an equivalent coach in a showroom, plus transportation and hookup costs. (Supra, 35 U.C.L.A. L.Rev. 399, at 426, 440).

4. There Are Other Remedies.

> We therefore need to know
>
> . . . the availability and effectiveness of other less drastic protective steps.
>
> Goldblatt v. Town of Hempstead, 360 U.S. 590.

To protect the tenants against distress sales, the Ordinance can simply provide that if the owner is the purchaser, the owner shall pay no less than the Blue Book value (which represents the only value owned by the tenant).

Further, the end can be achieved by simply establishing that rents will not

exceed fair market rents in non-rent-controlled jurisdictions at the time of turnover and the real harm is isolated, subjected to the focus of the legislation, and will not be the functional equivalent of shooting at a flea with an elephant gun.

5. The Ordinance Does Not Substantially Advance the Posited Governmental Purpose of Protecting the Tenant's Investment in a Wasting Asset in That it Lacks the Requisite "Close Fit" to Satisfy Constitutional Standards.

(a) The Conduct of the Landlord Is Unrelated to the Decline of a Depreciating Personal Property Asset.

There is a lack of nexus between the perceived harm, i.e., loss on a wasting asset and the remedy - wholesale transfer of rights in Appellant's real property. It lacks the requisite "close fit."

The Ordinance has the effect of compelling the landowner to act as an insurer of the tenant's decision to invest in a wasting asset. The conduct of the landlord is unrelated to the decline that the coach will inevitably experience, and the lack of that relationship precludes the imposition of the substantial property burdens that the Ordinance effects.

The Court has repeatedly observed that the purpose of the Fifth Amendment is:

> [T]o bar government from forcing some people alone to bear a public burden which, in all fairness and justice, should be borne by the public as a whole.

Armstrong v. United States, 364 U.S. 40, 49 (1960).

Nollan proclaims that certain methods may not be employed to achieve even the worthiest of government goals.

> The Commission may well be right that [acquiring coastal access] is a good idea, but that does not establish that the Nollans (and other coastal residents) alone can be compelled to contribute to its realization.

Nollan, supra, 483 U.S. at 841.

(b) The Ordinance Works An Unduly Oppressive Result Upon the Landowner By Creating Estates in Land to Protect Against an Occasional (And Hypothetical) Predatory Landlord.

> It is, of course, implicit in Goldblatt that a use restriction on real property may constitute a taking . . . if it has an unduly harsh impact upon the owner's use of the property.

Penn Central at 128.

The Court in Agins v. Tiburon, 447 U.S. 255 (1980) cited Euclid as the "seminal

decision" on the need to balance public benefit against private loss. (447 U.S. 255 at 261).

Lawton v. Steele condemns as violative of due process an Ordinance which is "unduly oppressive upon individuals." (152 U.S. 133 (1894) at 137).

> The "too far" test provides an independent measure of when a regulation becomes a taking. The "unduly oppressive" phrase in the substantive due process test, on the other hand, is an important part of the means analysis. The regulation is only "unduly oppressive" if it uses means that are more restrictive than necessary to accomplish the purpose.

57 Wash. L. Rev. 715, fn. 15.7.

II.

THE WHOLESALE TRANSFER BY REGULATION OF THE PARKOWNER'S RIGHTS IS A REGULATORY TAKING UNDER TRADITIONAL REGULATORY TAKINGS ANALYSIS.

In evaluating the constitutional propriety of a regulation within a taking context, the Court will employ a standard of review of "heightened scrutiny." Nollan v. California Coastal Commission.

A. THE CHARACTER OF THE GOVERNMENTAL ACTION IS TO CREATE AN ALIENABLE ESTATE IN THE PARKOWNER'S LAND ON BEHALF OF TENANTS WHICH SLICES THROUGH THE ENTIRE BUNDLE OF RIGHTS OF USE, POSSESSION AND DISPOSITION.

A tri-part test was established by the Court in Penn Central v. New York City, 438 U.S. 104 (1978). The Court in conducting its ad hoc inquiry to determine if there is a regulatory taking will consider: (1) the

character of the governmental action; (2) the economic impact; and (3) whether the regulation has interfered with distinct investment-backed expectations. Penn Central, supra, at 123-24.

Property ownership carries with it a bundle of rights, including the right to "possess, use and dispose of it." United States v. General Motors Corp., 323 U.S. 373 (1945) and Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982).

Each of those basic rights is compromised by the Ordinance, either acting alone, or in concert with the State Mobilehome Park Residency Law.

Use of The Property is Lost:

As noted by Justice Holmes in Pennsylvania Coal v. Mahon, what makes the right to mine coal valuable is that can be exercised with a profit. Equally, what makes the right to own a mobilehome park

valuable, is that it can be exercised with a profit in the nature of rents. The use of the property, as income property, is the ability to collect the rents. The outgoing tenant collects a substantial portion of the rents in advance.

Possession is Lost:

The Ordinance, in conjunction with the state law, effectively transfers possession to the present tenants for as long as they choose to remain, and to the designated purchaser of that tenant's interest at the time of the sale of the coach.

The Right of Disposition Has Been Lost:

There has been an effective transfer of control over the reversionary interest of the Appellant and, as noted by Chief Justice Rehnquist in Fresh Pond, supra, 464 U.S. 875:

> What has taken place is a transfer of control over the

reversionary interest retained by appellant. This power to exclude is "one of the most treasured strands in an owner's bundle of property rights."

B. THE ECONOMIC IMPACT OF THE ORDINANCE IS A FORCED TRANSFER TO THE TENANTS COLLECTIVELY OF, AMONG OTHER PROPERTY INTERESTS, ALL THE APPRECIATION IN THE LAND FROM TIME OF THE PASSAGE OF THE ORDINANCE UNTIL SALE OF A COACH, AND ALL THE APPRECIATION OF THE POTENTIAL OF THE LAND FROM THE TIME OF SALE TO INFINITY.

In this case the City's Ordinance, either standing alone or in conjunction with state law, transferred the right to all appreciation, the right to enter into a long-term lease at a reduced rate for compensation, the right to determine who will be the lessee, the right to determine the length of the lease, the right to

determine the amount of rental under the lease to present tenants. Effectively, the remainder interest has been expropriated in favor of the tenants, and they can cash in on it.

C. INVESTMENT BACKED EXPECTATIONS, BASED IN SUBSTANTIAL PART ON APPRECIATION AS A COMPONENT OF RETURN, ARE EVISCERATED BY THE TRANSFER OF ALL APPRECIATION TO TENANTS.

The Supreme Court has long held that the frustration of an owner's "distinct investment-backed expectations" is sufficient grounds for finding regulatory takings. (See Kaiser Aetna, 444 U.S. 164, (1979); Ruckelshaus v. Monsanto Company, 467 U.S. 986 (1984); Hodel v. Irving, 41 U.S. 704).

The Appellant has suffered substantial interference with its reasonable investment-backed expectations. Appellant's rents have

been fixed at below market rates, and all of the appreciation of the property from the time of the enactment of the Ordinance has been effectively transferred to the tenant or the tenant's successor, which the departing tenant is empowered to fully realize by way of a premium received upon the sale of a coach.

III.

THE ORDINANCE FAILS TO SATISFY SUBSTANTIVE DUE PROCESS IN THAT: (1) IT DOES NOT SERVE A VALID PUBLIC PURPOSE; (2) THE MEANS CHOSEN TO ACCOMPLISH THE DECLARED ENDS ARE NOT REASONABLY NECESSARY; AND (3) THE ORDINANCE WORKS AN UNDULY OPPRESSIVE RESULT UPON A MINORITY OF LANDOWNERS IN THE CITY OF CARPINTERIA.

A. THE MEANS CHOSEN TO ACCOMPLISH THE DECLARED ENDS ARE NOT REASONABLY NECESSARY AND WORK AN UNDULY OPPRESSIVE RESULT UPON APPELLANT.

While it is correct that the Court grants great deference to legislative decisions in economic matters in general and in rent control in particular, see, e.g., Pennell v. City of San Jose, supra, if the action is arbitrary the due process clause will be invoked when validate provisions of an Ordinance that are rationally related to a legitimate governmental purpose. See, e.g., Cleburne v. Cleburne Living Center, 413 U.S. 432 (1985), Moore v. East Cleveland, 431 U.S. 494 (1977).

It is plain that the purpose of preserving low and moderate income housing is not served by the Ordinance. Equally, the means chosen, i.e., to preserve the

tenant's "investment" in a depreciating asset by granting the tenant an alienable interest in the land is not reasonably necessary to the accomplishment of the goal of protecting the investment. Rather, as Goldblatt v. Hempstead and Lawton v. Steele hold, the massive transfers of wealth in the land of the Appellant to serve at best a marginal loss of "investment" by the tenants (in the case of vacancy decontrol, the tenant has already made the decision to move, his maximum loss is the cost of moving the coach deducted from its value as a coach off the pad) works an unduly oppressive result upon the minority of landowners.

WHY THIS WRIT SHOULD BE GRANTED

This Court invited the California courts to first address the issue of regulatory taking within this context. The California courts have done so and failed to find a regulatory taking in violation of federal

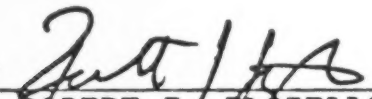
constitutional principles. The important questions of federal law presented here have never been ruled on by this Court. (Rule 10(c)).

IN CONCLUSION

Petitioner requests this Court to grant their Petition for Review.

Respectfully submitted,

ROBERT J. JAGIELLO, ESQ.

By 
ROBERT J. JAGIELLO,
Attorney for Petitioner

APPENDIX A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION SIX

SANDPIPER MOBILE VILLAGE, etc.,	2nd Civ. No. B058435
Plaintiff-Appellant,	(Super. Ct. No. 177809)
v.	(Santa Barbara County)
CITY OF CARPINTERIA, etc.,	
Defendant-Respondent.	

FILED OCTOBER 15, 1992, JOSEPH A. LANE, CLERK.

Here we uphold the rent control ordinance of the City of Carpinteria because: (1) it does not exact a compensable physical taking of the property of appellant, Sandpiper Mobile Village (Yee v. Escondido (1992) 503 U.S. ___ [118 L.Ed.2d 153, 112 S.Ct. ___]), (2) it is rational and serves a legitimate public

purpose and therefore does not violate substantive due process, and (3) on its face it validy regulates mobilehome rent.[1]

We do not consider its validity as applied because Sandpiper did not allege requisite facts in its complaint to raise this issue.

BACKGROUND AND CONTENTIONS

Sandpiper owns and operates a mobilehome park in Carpinteria. By judgment on the pleadings, the trial court denied Sandpiper's challenge to the constitutionality of Carpinteria's mobilehome park rent stabilization ordinance. We affirm.

We review this judgment by the same standards we use to review a judgment

---

[1] All future references to the rent control ordinance are to City of Carpinteria's Ordinance No. 371 readopting its Ordinance No. 287 which readopts chapter 5.69 of the Carpinteria Municipal Code.

entered after the sustaining of a demurrer without leave to amend. (See 6 Witkin, Cal. Procedure (3d ed. 1985) Proceedings Without Trial, § 263, pp. 564-565.)

We deem true all material and properly pleaded facts, however we may not consider opinions, contentions, deductions or conclusions of fact or law alleged. (Casella v. City of Morgan Hill (1991) 230 Cal.App.3d 43, 48, cert. den. ___ U.S. ___ [118 L.Ed.2d 387, 112 S.Ct. 1665]; Agins v. Tiburon (1980) 447 U.S. 255, 259, fn. 6.)

The maximum site rent allowed under the ordinance is the sum of the rent in effect on July 1, 1979, increased by 75 percent of the ratio of change in the Consumer Price Index. The ordinance permits a park owner to apply for additional rent increases to ensure a just and reasonable return on investment. No provision in the ordinance

permits park owners to immediately increase rent charged to incoming residents.

Sandpiper alleges that the ordinance unconstitutionally "prevents plaintiff from raising rents to market levels upon sale or other transfer of a unit . . ." Sandpiper states: "The application of the Rent Control Ordinance to plaintiff results in enabling the tenants to monetize the rent savings upon the sale of their mobile homes to third parties," which "constitutes an impermissible transfer of wealth by the defendant to the departing tenants in violation of California Constitution, Article I, § 19.[2]

Sandpiper also asserts the ordinance is irrational and serves no legitimate

---

[2] Article I, section 19 reads, in pertinent part, that "[p]rivate property may be taken or damaged for public use only when just compensation . . . has first been paid to . . . the owner."

governmental purpose to preserve low or affordable housing because it enables departing tenants to sell their mobilehome for a premium.

Sandpiper alleges that City's ordinance "has had the effect of depriving the plaintiff of all use and occupancy of its real property in the spaces occupied by tenants, except a greatly reduced income stream, and granting to the tenants . . . the right to physically permanently occupy and use the real property of plaintiff at reduced rentals." Sandpiper cites Hall v. City of Santa Barbara (9th Cir. 1986) 833 F.2d 1270, to support its position that the ordinance exacts a physical taking of its property.

Sandpiper states that "[t]he tenants . . . have used [their] power and ability on many occasions, to sell the rights of use and occupancy of plaintiff's real property

at reduced rentals, which have been transferred to . . . tenants by operation and enforcement of the Rent Control Law."

DISCUSSION

Sandpiper argues that enforcement of this ordinance constitutes a physical taking of its property because it transfers the right to market rents from the park owner to the tenants who obtain a premium for the sale of their coaches in the rent controlled park. (Hall v. City of Santa Barbara, supra, 833 F.2d 1270; accord Pinewood Estates v. Barnegat Tp. Levelling Bd. (3d Cir. 1990) 898 F.2d 347.) Carpinteria contends that its rent control ordinance is a constitutional economic regulation which does not exact a per se physical taking. (Yee v. City of Escondido (1990) 224 Cal.App.3d 1349, affd. Yee v. Escondido, supra, 118 L.Ed.2d 153; Casella v. City of Morgan Hill, supra, 230 Cal.App.3d 43.)

During the pendency of this appeal, the United States Supreme Court issued its opinion in Yee, supra, a case very similar to this one. The Supreme Court held that "[o]n their face, the state and local laws at issue here merely regulate petitioners' use of their land . . ." (Yee v. Escondido, supra, 118 L.Ed.2d at p. 166.) The High Court stated that "no government has required any physical invasion" of a park owner's property. (Id., at p. 165.) The Supreme Court stated that "[t]he government effects a physical taking only where it requires the landowner to submit to the physical occupation of his land." (Ibid., emphasis in text.) On their face, these laws do not compel a park owner to continue renting his or her property to tenants, therefore they do not require compensation, per se. (Ibid.)

The Yee court also rejected the contention that because the ordinance transfers wealth from park owners to incumbent tenants a physical invasion occurs. (Yee v. Escondido, supra, 118 L.Ed.2d at p. 167.) The High Court explained that no physical taking occurs regardless of "[w]hether the ordinance benefits only current mobile home owners or all mobile home owners . . ." (Ibid.)

Furthermore, a park owner is not entitled to compensation for a physical taking because of the inability to choose incoming tenants. (Yee v. Escondido, supra, 118 L.Ed.2d at p. 167.) The landowner still retains a number or choices. As in Yee, Sandpiper voluntarily rents its land to tenants. (Ibid.) Under the State Mobilehome Residency Law, a park owner is entitled to change the use of his land by evicting his tenants with six or twelve

months' notice. (Id., at p. 165; Civ. Code § 798.56, subd. (g).)

Sandpiper, like Yee, fails to establish a physical taking "because there has simply been no compelled physical occupation giving rise to a right to compensation . . ." (Yee v. Escondido, supra, 118 L.Ed.2d at p. 168; FCC v. Florida Power Corp. (1987) 480 U.S. 245).

Substantive Due Process

Sandpiper alleges that "the Ordinance is irrational and . . . does not serve a legitimate governmental purpose of preserving low or affordable housing," because it enables tenants to sell their mobilehomes at premiums thereby "burdening the space with the need to pay the additional premium."

California courts have previously upheld such rent control provisions as legitimate, rational exercises of the police power

because they are "'reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their property.' [Citation.]" (Casella v. City of Morgan Hill, supra, 230 Cal.App.3d at p. 56.)

In readopting its 1980 rent stabilization ordinance, the extending ordinance stated that "said Chapter . . . has proven to be an effective and beneficial program for the people of Carpinteria . . ." (City of Carpinteria Ord. No. 371.) It is not our role to second-guess this legislative determination. (Casella v. City of Morgan Hill, supra, 230 Cal.App.3d at p. 52, and see pp. 51-54, 56-67.)

Sandpiper argues that the premium received by tenants upon the sale of their mobilehomes "is one that otherwise could be sold by the park owner plaintiffs, in the process of negotiating a long-term lease

with a new tenant . . ." It further argues that although this premium is exempt from rent control, it provides the tenant with a long-term security and usually a reduced rent. California property law, however, "considers leasehold value the property of the tenant, not the landlord. [Citations.]" (Casella v. City of Morgan Hill, supra, 230 Cal.App.3d at p. 55.)

The regulation of rent in a scarce housing market is a public policy matter to be determined by the Legislature. (Casella v. City of Morgan Hill, supra, 230 Cal.App.3d at p. 57; see also Carson Mobilehome Park Owners' Assn. v. City of Carson (1983) 35 Cal.3d 184, 189, fn. 4.) The ordinance here is constitutional.

Regulatory Taking As Applied

"On their face, the state and local laws at issue here merely regulate petitioners' use of their land by regulating the

relationship between landlord and tenant." (Yee v. Escondido, supra, 118 L.Ed.2d at p. 166, emphasis in text.) The Supreme Court has admonished that "'the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary..'" (Pennell v. San Jose (1988) 485 U.S. 1, 10; and see Williamson Planning Comm'n v. Hamilton Bank (1985) 473 U.S. 172, 190, referring to Hodel v. Virginia Surface Min. & Recl. Assn. (1981) 452 U.S. 264, Agins v. Tiburon, supra, 447 U.S. 255, and Penn Central Transp. Co. v. New York City (1978) 438 U.S. 104.) Whether a regulation constitutes a taking depends on such factors as the "economic impact of the challenged action and the extent to which it interferes with reasonable investment-backed expectations. [Citations.) Those factors simply cannot be evaluated until the administrative agency has arrived at a

final, definitive position regarding how it will apply the regulations at issue to the particular land in question." (Williamson Planning, supra, at pp. 190-191.) To determine whether a regulatory taking has occurred, statutory regulations must be analyzed by engaging in "'essentially ad hoc, factual inquiries.'" (Yee v. Escondido, supra, 118 L.Ed.2d at p. 166, quoting Kaiser Aetna v. United States (1979) 444 U.S. 164, 175.) Because Sandpiper has not alleged that it has attempted to change the use of its park or to apply for rent increases, its regulatory taking claim is not ripe. (Yee, supra, at p. 169.)

Facial Challenge

Sandpiper's complaint does not challenge the ordinance on its face. In its supplemental brief to this court filed after the United States Supreme Court decided Yee, Sandpiper argues that the ordinance does not

substantially advance a legitimate governmental interest no matter how the ordinance is applied. Because this assertion "does not depend on the extent to which petitioners are deprived of the economic use of their particular pieces of property or the extent to which these particular petitioners are compensated, petitioners' facial challenge is ripe." (Yee v. Escondido, supra, 118 L.Ed.2d at p. 169; see also Fisher v. City of Berkeley (1984) 37 Cal.3d 644, 654, fn. 3, affd. Fisher v. Berkeley (1986) 475 U.S. 260.)

City claims that even if the issue is ripe for adjudication, the statute of limitations has run. We disagree. City passed the ordinance at issue in April 1985 and filed its complaint on July 21, 1989. Sandpiper filed its complaint within the five-year statute of limitations applicable to the question of whether real property has

been taken. (Garden Water Corp. v. Fambrough (1966) 245 Cal.App.2d 324, 327-328; Code Civ. Proc., § 319.)

The Supreme Court "'. . . has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails.' [Citations.] When a landowner decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge, (see, e.g., Pennell [v. San Jose], supra, [485 U.S. at p.] 12, fn. 6) . . ." (Yee v. Escondido, supra, 118 L.Ed.2d at p. 166.)

In evaluating whether an ordinance on its face constitutes the taking of a landowner's property, the question is whether the ordinance substantially advances a legitimate state interest in the public

welfare. (Nollan v. California Coastal comm'n (1987) 483 U.S. 825; 834; Agins v. Tiburon, supra, 447 U.S. at p. 261; Euclid v. Ambler Realty Co. (1926) 272 U.S. 365, 395-397.)

Vacancy control precludes park owners form raising rents immediately to new tenants. It is a form of rent control which courts have held to be legitimate regulation. (Casella v. City of Morgan Hill, supra, 230 Cal.App.3d at p. 52.)

Sandpiper contends, however, that under the ordinance it "has no legal right to receive any compensation for the rights now enjoyed by the tenants of the park [i.e., the right to obtain a premium on sales] other than the stream of income from rents as regulated by the Rent Control Law."

Unless the regulatory ordinance denies the—property owner substantially all economically "viable use of [the] land,"

there is no compensable taking. Agins v. Tiburon, supra, 447 U.S. at p. 260; Long Beach Equities, Inc. v. County of Ventura (1991) 231 Cal.App.3d 1016, 1038.) Assuming that Sandpiper's profit is severely reduced, the complaint fails to meet this test. "Even where the is a very substantial diminution in the value of land, there is no taking." (Long Beach Equities, supra, at p. 1036.)

The instant ordinance recognizes the need "to provide for a just and reasonable return to management in all foreseeable cases" and provides the means to ensure this. (Carpinteria Mun. Code § 5.60.050.) In addition to the calculated automatic annual rent increases, the rent stabilization board "may adopt an adjustment to the effective rent schedule up to that required for a just and reasonable return . . ." (Ibid.)

The management of a mobilehome park may, by verified petition, "also apply for a summary adjustment in the maximum rent based upon new added substantial cost for a specific service, tax or assessment or for a rapidly accelerating and substantial specific cost which has been imposed upon the mobile home park . . ." (Carpinteria Mun. Code § 5.60.050.) The ordinance provides, inter alia, for non-contested determinations, joint agreements for maximum rent, contested hearing and judicial review of its rent provisions.

California courts have previously upheld such rent control provisions as legitimate, rational exercises of the police power, because they are "'reasonably calculated to eliminate excessive rents and at the same time provide landlords with a just and reasonable return on their property.'

[Citations.)" (Casella v. City of Morgan Hill, supra, 230 Cal.App.3d at p. 56.)

Sandpiper argues that under the Nollan test, supra, this ordinance does not substantially advance its purpose of maintaining low to moderate income housing. Sandpiper opines that vacancy control improperly shifts to tenants the owner's "right" to increase rents by enabling tenants to obtain premium prices for the sale of their coaches.

This ordinance meets the Nollan test. It substantially advances a legitimate state interest. It seeks to remedy an inequitable market situation caused by the scarcity of mobilehome sites. It seeks to protect mobilehome owners' investments, and also to provide park owners with a reasonable return on their investment.

Sandpiper argues that the ordinance does not accomplish its purpose because the high

prices a new tenant pays for a mobilehome coach exceed the benefits the tenant derives from rent control.

In readopting its 1980 rent stabilization ordinance, however, the extending ordinance stated that "said Chapter . . . has proven to be an effective and beneficial program for the people of Carpinteria . . ." (City of Carpinteria Ord. No. 371.)

This legislative determination states a sufficient nexus between the effect of the ordinance and the objectives it seeks to advance. (See Nollan v. California Coastal Comm'n. supra, 483 U.S. at p. 837.) Under such circumstances, the manner in which the City desires to achieve its goal is a legislative question, not a judicial one.

The judgment is affirmed. Each side to bear its own costs.

CERTIFIED FOR PUBLICATION.

GILBERT, J.

We concur:

STONE, P.J.

YEGAN, J.

APPENDIX B

Second Appellate District, Division Six,
No. B058435
SO29800

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

SANDPIPER MOBILE VILLAGE,

Appellant

v.

CITY OF CARPINTERIA,

Respondent

SUPREME COURT FILED FEB. 11, 1993, ROBERT WANORUN, CLERK.

Appellant's petition for review DENIED.

Lucas, C.J. and Panelli, J. are of the opinion the petition should be granted.

Baxter, J. did not participate.

S/Lucas
Chief Justice

APPENDIX C

COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOR THE SECOND APPELLATE DISTRICT

DIVISION SIX

FILED FEBRUARY 16, 1993

Robert J. Jagiello
P.O. Box 879
26620 Kings Court
Lake Arrowhead, CA 92352

Re: Sandpiper Mobile Village
vs.
Carpinteria, City of
2 Civil No. B058435
Santa Barbara No. 177809

* * REMITTITUR NOTICE * *

Notice is hereby given that the Remittitur has been issued this date and that the opinion, decision and order entered in the above-entitled cause on 10-15-93 is now final.

** AFFIRMED IN FULL. **

Each side to bear its own costs.

Joseph A. Lane, Clerk

By: James L. Terry
Deputy Clerk

APPENDIX D

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SANDPIPER MOBILE VILLAGE, a Limited Partnership, Plaintiff, v. CITY OF CARPINTERIA, a Municipal Corporation, and DOES 1 through 10, inclusive,	CASE NO. 177809 ORDER GRANTING JUDGMENT ON THE PLEADINGS

FILED SUPERIOR COURT OF SANTA BARBARA MARCH 19, 1991, MARY SANDOVAL, DEPUTY CLERK.

The Motion of Defendant City of Carpinteria for Judgment on the Pleadings came on regularly for hearing before the Honorable Bruce WM. Dodds, Judge of the Santa Barbara Superior Court on November 30, 1990. Phillip Kramer of Jagiello and Pech appeared as counsel for Plaintiff Sandpiper Mobile Village and Donald R. Lincoln of Endeman, Lincoln, Turek & Heater

appeared as counsel for Defendant City of Carpinteria.

The matter having been argued and submitted and the Court having determined that the Complaint fails to state facts sufficient to constitute a cause of action and good cause appearing,

IT IS ORDERED AND ADJUDGED THAT:

(1) The Motion be and hereby is granted;

(2) The above entitled action is hereby dismissed with prejudice; and

(3) Defendant City of Carpinteria recover its costs herein incurred in the sum of $_____.

DATED: 3-19-91

S/Bruce WM. Dodds
Judge of the Superior Court

APPROVED AS TO FORM:

S/Richard Pech
Richard Pech
Attorneys for Plaintiff

APPENDIX E

ORDINANCE NO. 371

AN ORDINANCE OF THE CARPINTERIA CITY COUNCIL RE-ADOPTING AND EXTENDING CHAPTER 5.69, AS AMENDED, OF THE CARPINTERIA MUNICIPAL CODE RELATING TO MOBILE HOME PARK RENT STABILIZATION, FOR AN ADDITIONAL FIVE-YEAR PERIOD
(EXCERPTS)

5.69.040 Maximum rent. A. Formula. Except as otherwise expressly provided in this chapter, the maximum rent for each mobile home space that management of a mobile home park shall be permitted to charge shall be as set forth in an effective rent schedule determined as follows:

The maximum allowable rent shall be calculated annually and shall be the sum of the following:

1. The July 1, 1979, rent; and

2. The July 1, 1979 rent times 75% of the ratio of change in the Consumer Price Index (C.P.I.).

B. Effective Rent Schedule. Annually and as soon as practical after the release of the C.P.I. for May of each year and using the July 1, 1979 rent schedules previously filed for each mobile home park, the city manager shall make the calculations for each mobile home park, as provided by Paragraph A of this Section 5.69.040, and shall file the same in the city clerk's office as a rent schedule and mail a copy of the applicable rent schedule to the management of each mobile home park, specifying the maximum rent for each mobile home space. The rent schedule, if filed before July 1 of that year shall become effective as of July 1 of that year, or, if not filed until after July 1, shall become effective as of filing.

5.69.050 Adjustments. A. Management Adjustment. The rents provided by Section 5.69.040 are intended to provide for a just and reasonable return to management in all

foreseeable cases. In the event that management of any mobile home park contends that the maximum rent as provided by Section 5.69.040 shall not provide a "just and reasonable" return, management shall file with the rent stabilization board a verified petition showing that the strict application of the formula specified in Paragraph A of Section 5.69.040 prevents a just and reasonable return to management and request for an adjustment of the rent schedule up to a "just and reasonable" return for that mobile home park. In the event that the rent stabilization board finds the strict application of the formula specified in Section 5.60.040 does not allow for a "just and reasonable" return, then notwithstanding Paragraph A of Section 5.60.040, it may adopt an adjustment to the effective rent schedule up to that required for a just and

reasonable return pursuant to procedures set forth in this chapter.

The management of a mobile home park by verified petition may also apply for a summary adjustment in the maximum rent based upon new added substantial cost for a specific service, tax or assessment or for a rapidly accelerating and substantial specific cost which has been imposed upon the mobile home park and which are beyond the reasonable control of management so as to allow management to pass through such cost to the respective tenants of the mobile home park. In the event such petition is filed, the rent stabilization board may allow an adjustment to be based thereon pursuant to the procedures set forth herein, or alternatively, it may require management to file a petition to show that the presently permitted maximum rent does not provide a "just and reasonable return."

B. Tenant Adjustment. Any tenant may petition the rent stabilization board to reduce the maximum permitted rent in the event that management has reduced or limited any service to a tenant (including any change in policy with respect to children or pets), or the tenants of the mobile home park as a whole that were in effect on July 1, 1979. Such petition shall be verified. The amount of the reduction shall be the cost savings to management resulting from such reduction or elimination of services. In the event that the rent stabilization board finds that there has been a reduction or elimination of service to the tenant or tenants from and after July 1, 1979, then notwithstanding Paragraph A of Section 5.60.040, it may adopt an adjustment of the effective rent schedule to decrease the amount of the maximum rent allowable in an amount equal to management's savings by the

reduction of or elimination of such services.

Any tenant of a mobile home park by verified petition may also apply for a summary adjustment of the maximum rent based upon a deleted substantial cost for a specific service, tax or assessment or for a rapidly decreasing and substantial specific operating cost of the mobile home park so as to require management to pass through the savings of such cost to the respective tenants of the mobile home park. In the event such petition is filed, the rent stabilization board may allow the adjustment to be made based thereon pursuant to the procedures set forth herein.

C. Cross Adjustment. In the event that a petition for an adjustment is filed pursuant to this Section 5.69.050, the rent stabilization board may make adjustment in accordance with both Paragraphs A and B of

this Section 5.69.050 that are brought out in the hearing and in consideration of the petition. In the event that any adjustment shall be made pursuant to this Paragraph C to this Section 5.69.050, such adjustment shall not reduce the maximum allowable rent below a "just and reasonable" return under all the facts.

D. Conditions of Adjustment. In the event that the rent stabilization board shall determine that any adjustment shall be made pursuant to this Section 5.60.050 then, in that event, the rent stabilization board may impose conditions to the adjustment and, where appropriate, may limit the period of time of such adjustment. Should an adjustment be made pursuant to this Section 5.69.050, the rent stabilization board shall adopt a new effective rent schedule for the mobile home park giving effect to such adjustment.

5.69.130 Maximum rent. Management shall not request, demand or receive from a tenant more than the maximum rent set forth in an effective rent schedule including any adjustment thereof fixed by the rent stabilization board.

APPENDIX F

CALIFORNIA MOBILEHOME RESIDENCY LAWS

(EXCERPTS)

ARTICLE 6. TERMINATION OF TENANCY

§ 798.55. Protection from actual or constructive eviction; termination or refusal to renew; reasons; notice; time:

(a) The Legislature finds and declares, that because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afford by the provisions of this chapter.

(b) The management shall not terminate or refuse to renew a tenancy, except for a reason specified in this article and upon the giving of written notice to the

homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure, to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, as defined in Section 18005.8 of the Health and Safety Code, each junior lienholder, as defined in Section 18005.3 of the Health and Safety Code, and the registered owner of the mobilehome, if other than the homeowner, by United States mail within 10 days after notice to the homeowner addressed to the legal owner and junior lienholder, and the registered owner at their addresses, as set forth in the registration card specified in Section 18091.5 of the Health and Safety Code.

§ 798.56. Authorized reasons for termination:

A tenancy shall be terminated by the management only for one or more of the following reasons:

(a) Failure of the homeowner or resident to comply with a local ordinance or state law or regulation relating to mobilehomes within a reasonable time after the homeowner receives a notice of noncompliance from the appropriate governmental agency.

(b) Conduct by the homeowner or resident, upon the park premises, which constitutes a substantial annoyance to other homeowners or residents.

(c) Conviction of the homeowner or resident for prostitution or a felony controlled substance offense if the act resulting in the conviction was committed anywhere on the premises of the mobilehome park, including, but not limited to, within the homeowner's mobilehome.

However, the tenancy may not be terminated for the reason specified in this subdivision if the person convicted of the offense has permanently vacated, and does not subsequently reoccupy, the mobilehome.

(d) Failure of the homeowner or resident to comply with a reasonable rule or regulation of the park which is part of the rental agreement or any amendment thereto.

No act or omission of the homeowner or resident shall constitute a failure to comply with a reasonable rule or regulation unless and until the management has given the homeowner written notice of the alleged rule or regulation violation and the homeowner or resident has failed to adhere to the rule or regulation within seven days. However, if a homeowner has been given a written notice of an alleged violation of the same rule or regulation, on three or

more occasions within a 12-month period after the homeowner or resident has violated that rule or regulation, no written notice shall be required for a subsequent violation of the same rule or regulation.

Nothing in this subdivision shall relieve the management from its obligation to demonstrate that a rule or regulation has in fact been violated.

(e)(1) Nonpayment of rent, utility charges, or reasonable incidental service charges; provided that the amount due has been unpaid for a period of at least five days from its due date, and provided, that the homeowner shall be given a three-day written notice subsequent to that five-day period to pay the amount due or to vacate the tenancy. For purposes of this subdivision, the five-day period does not include the date the payment is due. The three-day written notice shall be given to

the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure. A copy of this notice shall be sent to the persons or entities specified in subdivision (b) of Section 798.55 within 10 days after notice is delivered to the homeowner. If the homeowner cures the default, the notice need not be sent. The notice may be given at the same time as the 60 days' notice required for termination of the tenancy.

(2) Payment by the homeowner prior to the expiration of the three-day notice period shall cure a default under this subdivision. In the event the homeowner does not pay prior to the expiration of the three-day notice period, the homeowner shall remain liable for all payments due up until the time the tenancy is vacated.

(3) Payment by the legal owner, as defined in Section 18005.8 of the Health and Safety Code, any junior lienholder, as

defined in Section 18005.3 of the Health and Safety Code, or the registered owner, as defined in Section 18009.5 of the Health and Safety Code, if other than the homeowner, on behalf of the homeowner prior to the expiration of 30 calendar days following the mailing of the notice to the legal owner, each junior lienholder, and the registered owner provided in subdivision (b) of Section 798.55, shall cure a default under this subdivision with respect to that payment.

(4) Cure of a default of rent, utility charges, or reasonable incidental service charges by the legal owner, any junior lienholder, or the registered owner, if other than the homeowner, as provided by this subdivision, may not be exercised more than twice during a 12-month period.

(5) If a homeowner has been given a three-day notice to pay the amount due or

to vacate the tenancy on three or more occasions within the preceding 12-month period, no written three-day notice shall be required in the case of a subsequent nonpayment of rent, utility charges, or reasonable incidental service charges.

In that event the management shall give written notice to the homeowner in the manner prescribed by Section 1162 of the Code of Civil Procedure to remove the mobilehome from the park within a period of not less than 60 days, which period shall be specified in the notice. A copy of this notice shall be sent to the legal owner, each junior lienholder, and the registered owner of the mobilehome, if other than the homeowner, as specified in paragraph (b) of Section 798.55, by certified or registered mail return receipt requested within 10 days after notice is sent to the homeowner.

(f) Condemnation of the park.

(g) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use requested has been granted.

(4) The notice requirements for termination of tenancy set forth in Section 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

(h) The report required pursuant to subdivisions (b) and (i) of Section 65863.7 of the Government code shall be given to the

homeowners or residents at the same time that notice is required pursuant to subdivision (g) of this notice.

§ 798.56a. Notice to management after receipt of notice of termination by legal owner and each junior lienholder; right to sell mobilehome within park:

(a) Within 60 days following receipt, or not later than 65 days after the mailing, of the notice of termination of tenancy for nonpayment, or rent or other charges, the legal owner and each junior lienholder shall notify the management in writing of at least one of the following:

(1) Its offer to sell the obligation secured by the mobilehome to the management for the amount specified in its written offer. In that event, the management shall have 15 days following receipt of the offer to accept or reject the offer in writing. If the offer is rejected, the person or

entity shall have 10 days in which to exercise one of the other options contained in this section and shall notify management in writing of its choice.

(2) Its intention to foreclose on its security interest in the mobilehome.

(3) Its request that the management pursue the termination of tenancy against the homeowner and its offer to reimburse management for the reasonable attorney's fees and court costs incurred by the management in that action.

(b) In the event that the legal owner or junior lienholder exercises any option described in paragraph (2) or (3) of subdivision (a), and has the right to sell the mobilehome within the park to a third party in accordance with this article, that person or entity shall have the right to keep the mobilehome on the site within the mobilehome park until it is resold as long

as the person or entity performs all of the following acts:

(a)(A) Satisfies, within the time period specified in subdivision (a), all of the homeowner's responsibilities and liabilities owing to the management for the 90 days preceding the mailing of the notice of termination of tenancy and then continue to satisfy them as they accrue from the date of the mailing of that notice until the date the mobilehome is resold.

(B) Performance under this paragraph does not cure the default of the homeowner.

(C) For purposes of this paragraph, the "homeowner's responsibilities and liabilities" means all rents, utilities, reasonable maintenance charges of the mobilehome and its premises, and reasonable maintenance of the mobilehome and its premises pursuant to existing park rules and regulations.

(2) Within the time period specified in subdivision (a), commences all repairs and necessary corrective actions so that the mobilehome complies with park rules and regulations in existence at the time the notice of termination of tenancy was given as well as the health and safety standards specified in Sections 18550, 18552, and 18605 of the Health and Safety Code, and completes these repairs and corrective actions within 90 calendar days of that notice, or before the date the mobilehome is resold, whichever is earlier.

(3) Complies with the requirements of Article 7 (commencing with Section 798.70) as it relates to the transfer of a mobilehome to a third party.

(c) In the event the legal owner or junior lienholder does not respond to the notice provided by management by notifying management in writing of its election

pursuant to subdivision (a), or does not satisfy the requirements of subdivision (b), that person or entity shall have no rights to sell the mobilehome within the park to a third party.

(d) In the event the homeowner files for bankruptcy, the periods set forth in this section are tolled until the mobilehome is released from bankruptcy.

(e) Notwithstanding any other provision of law, including, but not limited to, Section 18099.5 of the Health and Safety Code, in the event neither the legal owner nor a junior lienholder, if any, notifies the management of its decision pursuant to subdivision (a) within the period allowed, or performs as agreed within 30 days, the management may either remove the mobilehome from the premises and place it in storage or store it on its site. In this case, notwithstanding any other provision of law,

the management shall have a warehouseman's lien in accordance with Section 7209 of the Commercial Code against the mobilehome for the costs of dismantling and moving, if appropriate, as well as storage, which shall be superior to all other liens, except the lien provided for in Section 18116.1 of the Health and Safety Code, and may enforce the lien pursuant to Section 7210 of the commercial code.

(f) All written notices required by this section shall be sent to the other party by certified or registered mail with return receipt requested.

ARTICLE 7. TRANSFER OF MOBILEHOME OR MOBILEHOME PARK

§ 798.74. Prior approval of purchaser; grounds for withholding; financial information; notice of acceptance or rejection; interview; fee; credit or refund:

(a) The management may require the right of prior approval of a purchaser of a mobilehome that will remain in the park and that the selling homeowner or his or her agent gives notice of the sale to the management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the rent and charges of the park unless the management reasonably determines that, based on the purchaser's prior tenancies, he or she will not comply with the rules and regulations of the park. In determining whether the purchaser has the financial ability to pay the rent and charges of the park, the management shall not require the purchaser to submit copies of any personal income tax returns in order to obtain approval for residency in the park. However, management may require the purchaser to document the amount and source

of his or her gross monthly income or means of financial support.

Upon request of any prospective homeowner who proposes to purchase a mobilehome that will remain in the park, management shall inform that person of the information management will require in order to determine if the person will be acceptable as a homeowner in the park.

Within 15 business days of receiving all of the information requested from the prospective homeowner, the management shall notify the seller and the prospective homeowner, in writing, of either acceptance or rejection of the application, and the reason if rejected. During this 15-day period the prospective homeowner shall comply with the management's request, if any, for a personal interview. If the approval of a prospective homeowner is withheld for any reason other than those

stated in this article, the management or owner may be held liable for all damages proximately resulting therefrom.

(b) If the management collects a fee or charge from a prospective purchaser of a mobilehome in order to obtain a financial report or credit rating, the full amount of the fee or charge shall be credited toward payment of the first month's rent for that mobilehome purchaser. If, for whatever reason, the prospective purchaser is rejected by the management, the management shall refund to the prospective purchaser the full amount of that fee or charge within 30 days from the date of rejection. If the prospective purchaser is approved by the management, but, for whatever reason, the prospective purchaser elects not to purchase the mobilehome, the management may retain the fee, or a portion thereof, to defray its administrative costs under this section.

Supreme Court, U.S.
D
MAR 3 1993

No. 92-1418

In the Supreme Court

OF THE

United States

OCTOBER TERM 1992

SANDPIPER MOBILE VILLAGE,
A Limited Partnership,
Petitioner,

VS.

THE CITY OF CARPINTERIA,
Respondent.

On Petition For A Writ Of Certiorari To The Second Appellate District, Division Six, Court of Appeal For the State of California

RESPONDENT'S BRIEF IN OPPOSITION

DONALD R. LINCOLN
(Counsel of Record)
LINDA B. REICH
ENDEMAN, LINCOLN, TUREK & HEATER
600 B Street, Suite 2400
San Diego, California 92101
(619) 544-0123

PETER BROWN,
City Attorney
THOMAS WISE,
Deputy City Attorney
HATCH & PARENT
21 East Carrillo Street
Santa Barbara, California 93101
(805) 963-9231

Attorneys for Respondent
City of Carpinteria

Bowne of Los Angeles, Inc., Law Printers (213) 627-2200

QUESTIONS PRESENTED

1. Whether the state court was correct in ruling that the City of Carpinteria's Rent Stabilization Ordinance did not constitute a federal regulatory taking, even though it restricts a parkowner's ability to increase space rent whenever a mobilehome is transferred from one homeowner to another.

2. Whether the state court was correct in ruling that the City of Carpinteria's Rent Stabilization Ordinance is not a violation of federal substantive due process even though it restricts a parkowner's ability to increase space rent whenever a mobilehome is transferred from one homeowner to another.

LIST OF PARTIES

The parties to the proceeding below were the Petitioner, Sandpiper Mobile Village, a limited partnership, and Respondent, City of Carpinteria.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
A. Background	3
B. Procedural History	4
1. The State Superior Court Ruling	4
2. The State Court Of Appeal Decision	5
3. The California Supreme Court's Denial of Review	6
WHY THIS WRIT SHOULD BE DENIED	6
I.	
THE LOWER COURT'S DECISION IS CONSISTENT WITH THIS COURT'S DECISION IN YEE AND OTHER CALIFORNIA RENT CONTROL CASES	6
II.	
THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED SANDPIPER'S TAKING CLAIMS	11
A. The Court Below Correctly Ruled That Carpinteria's Ordinance Does Not Constitute A Physical Taking	11
B. The Court Below Correctly Ruled That Any As Applied Regulatory Taking Claim Is Not Ripe	11
C. The Court Below Correctly Ruled That Sandpiper's Facial Regulatory Claim Was Meritless	13
1. Carpinteria's Ordinance Does Not Deprive Sandpiper Of All Economic Use Of Its Property	14

TABLE OF CONTENTS

Page

2. On Its Face The Ordinance Substantially Advances Legitimate State Interests 15

a. Carpinteria's Ordinance Protects Current Homeowners From Excessive Rent Increases And Protects The Investment in Their Homes 16

b. The Ordinance Protects Future Homeowners In The Same Way 18

III.

THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED THAT CARPINTERIA'S ORDINANCE DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS 21

CONCLUSION 22

APPENDIX A-1

TABLE OF AUTHORITIES

Cases

Page

Agins v. Tiburon, 447 U.S. 255, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980) 14

Andrus v. Allard, 444 U.S. 51, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979) 15

Azul Pacifico v. City of Los Angeles, 948 F.2d 575 (9th Cir. 1991), *opinion withdrawn*, 973 F.2d 704, (9th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 1049, 122 L.Ed.2d 357 (1993) 13, 17, 19

Block v. Hirsch, 256 U.S. 135, 41 S.Ct. 458, 65 L.Ed. 865 (1921) 14, 21

Blue Jeans Equities West v. City and County of San Francisco, 3 Cal.App.4th 164, 4 Cal.Rptr.2d 114 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 191, 121 L.Ed.2d 135 (1992) 15

Carson Mobilehome Parkowners Ass'n v. City of Carson, 35 Cal.3d 184, 197 Cal.Rptr. 284 (1983) 21

Casella v. City of Morgan Hill, 230 Cal.App.3d 43, 280 Cal.Rptr. 876 (1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 1665, 118 L.Ed.2d 387 (1992) 10, 15, 18, 23

Commercial Builders of Northern California v. City of Sacramento, 941 F.2d 872 (9th Cir. 1991), *cert. denied*, ___ U.S. ___, 112 S.Ct. 1997, 118 L.Ed.2d 593 (1992) 15

Day-Brite Lighting, Inc. v. Missouri, 342 U.S. 421, 72 S.Ct. 405, 96 L.Ed. 469 (1952) 20

De Anza Properties X Ltd. v. County of Santa Cruz, 936 F.2d 1084, (9th Cir. 1991) 13

Eamiello v. Liberty Mobile Home Sales, Inc., 208 Conn. 620, 546 A.2d 805 (1989), *appeal dismissed*, 489 U.S. 1002, 109 S.Ct. 1104, 103 L.Ed.2d 169 (1989) 20

Ferguson v. Skrupa, 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963) 20

TABLE OF AUTHORITIES

CASES

Page

First English Evangelical Lutheran Church v. County of Los Angeles, 210 Cal.App.3d 1353, 258 Cal.Rptr. 893 (1989) *cert. denied*, 493 U.S. 1056, 110 S.Ct. 866, 107 L.Ed.2d 950 (1990) 8

Fisher v. City of Berkeley, 37 Cal.3d 644, 209 Cal.Rptr. 682, *affirmed*, 475 U.S. 260, 106 S.Ct. 1045, 89 L.Ed.2d 206 (1986) 22

Hall v. City of Santa Barbara, 833 F.2d 1270 (9th Cir. 1986), *cert. denied*, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988) 4, 7

Kendall v. Ernest Pestana, 40 Cal.3d 488, 220 Cal.Rptr. 818 (1985) 23

Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987) 14, 15

Lucas v. South Carolina Coastal Council, 505 U.S. ___, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992) 14

Nash v. City of Santa Monica, 37 Cal.3d 97, 207 Cal.Rptr. 285 (1984), *app. dism.*, 470 U.S. 1046, 105 S.Ct. 1740, 84 L.Ed.2d 807 (1985) 21

Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987) 15, 18

Oceanside Mobilehome Parkowner's Assn. v. City of Oceanside, 157 Cal.App.3d 887, 204 Cal.Rptr. 239 (1984) 8, 9, 16

Palomar Estates East v. City of San Marcos, San Diego Superior Court No. N48882 17

Penn Central Transportation Co. v. New York City, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978) 12, 15

Pennell v. City of San Jose, 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988) 11, 21

Pinewood Estates of Michigan v. Barnegat Township Leveling Board, 898 F.2d 347 (3rd Cir. 1990) 4, 7

TABLE OF AUTHORITIES

CASES

Page

Sandpiper Mobile Village v. City of Carpinteria, 10 Cal.App.4th 542, 12 Cal.Rptr.2d 623 (1992) 5, 8, 11, 12, 13, 21

Schnuck v. City of Santa Monica, 935 F.2d 171 (9th Cir. 1991) 22

Sierra Lake Reserve v. City of Rocklin, 938 F.2d 951 (9th Cir. 1991), *vacated*, ___ U.S. ___, 113 S.Ct. 31, 121 L.Ed.2d 4 (1992) 22

Williamson County Regional Planning Comm. v. Hamilton Bank, 473 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985) 12

Yee v. City of Escondido, 224 Cal.App.3d 1349, 274 Cal.Rptr. 551 (1990), *affirmed*, 503 U.S. ___, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992) 5, 6, 8, 9, 10, 11, 12, 17, 18

Statutes

California Constitution, Art. I, sec. 19 ..... 4, 9

Mobilehome Residency Law (Civil Code sec. 798 et seq.) 2, 3, 6, 9

United States Constitution, 5th & 14th Amendments 2, 4, 9

28 U.S.C. section 1257 2

42 U.S.C. section 1983 13

Texts and Articles

Baar, "*The Right to Sell The 'Im'mobile Manufactured Home in its Rent Controlled Space in the 'Im'mobile Home Park: Valid Regulation or Unconstitutional Taking?*" 24 Urban Lawyer 157 (1992) 16

Manheim, "*Tenant Eviction Protection and the Takings Clause*," 1989 Wisc. L. Rev. 925 15

Nutt-Powell, "*Manufactured Homes, Making Sense of a Housing Opportunity*," (Auburn House Publishing Co., Boston, Mass. 1982) 23

No. 92-1418

In the Supreme Court

OF THE

United States

OCTOBER TERM 1992

SANDPIPER MOBILE VILLAGE,
A Limited Partnership,
Petitioner,

VS.

THE CITY OF CARPINTERIA,
Respondent.

On Petition For A Writ Of Certiorari To The Second Appellate District, Division Six, Court of Appeal For the State of California

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, City of Sandpaper ("City"), respectfully requests that this Court deny Sandpiper Mobile Village's ("Sandpiper") Petition for Writ of Certiorari ("Petition") seeking review of the California Court of Appeal opinion in this case.

OPINIONS BELOW

On March 19, 1991, the California state trial court (Santa Barbara Superior Court, Case No. 177809) issued its Order granting Judgment on the Pleadings and dismissing Sandpiper's action. See, Order, Petition at D24-25.

On October 15, 1992, the California Court of Appeal (Second Appellate District, Division Six, Case No. B058435) issued its opinion affirming the Judgment of Dismissal. The opinion is

reported at 10 Cal.App.4th 542, 12 Cal.Rptr.2d 623; see also, Slip *Opinion, Petition at A1-21.*

On February 11, 1993, the California Supreme Court (Case No. S029800) issued its one page ruling denying Sandpiper's Petition for Review. See, Ruling, Petition at B22.

JURISDICTION

The opinion of the California Court of Appeal, Second Appellate District, Division Six, was entered October 15, 1992. On February 11, 1993, the California Supreme Court denied Sandpiper's Petition for Review. Sandpiper's Petition for Certiorari was docketed with the United States Supreme Court on March 1, 1993. The jurisdiction of the United States Supreme Court was invoked under 28 U.S.C. section 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

The California Constitution, Article I, Sec. 19, provides in pertinent part:

> Private property may be taken or damaged for public use only when just compensation, . . . has first been paid to, or into court for, the owner.

The California Mobilehome Residency Law (Cal. Civ. Code, Section 798 et seq.) governs many aspects of the relationship between a mobilehome parkowner and a mobilehome owner residing on a rented space in a mobilehome park. Civil Code Section 798.55(a) contains legislative justification for the unique protections provided mobilehome owners. Protections include restrictions on terminating a space tenancy (e.g., Civil Code, Sections 798.55(b), 798.56) and restrictions preventing a

parkowner from interfering with or preventing a homeowner from selling his home to a new purchaser as long as the prospective homeowner has the financial ability to pay the space rent and does not have a prior history indicating that he or she will not comply with the rules and regulations of the park. (E.g., Civil Code, Section 798.74).

[California Civil Code, Sections 798.55, 798.56, 798.56a, and 798.74 are set forth in Appendix F to Sandpiper's Petition at F34-52.]

In March 1980, the City of Carpinteria passed Ordinance 287 establishing mobilehome rent stabilization. Pursuant to that ordinance and its amendments,[1] each year the parkowner is limited to charging as a "maximum rent", the base rent on a certain date (here November 1, 1987) increased by 75% of the CPI increase from a certain date (here November 1, 1987). See, Ordinance 419, sec. 5.69.040, RA at A2. In addition, the parkowner has the opportunity to seek additional rent increases in order to ensure that he receives a "just and reasonable return." (See, Ordinance 371, sec. 5.69.050, Petition at E27-29.)

STATEMENT OF THE CASE

A. Background

The City of Carpinteria is located in the County of Santa Barbara in the State of California.

---

[1]Ordinance 287 added Chapter 5.69 to the Carpinteria Municipal Code. That Chapter has been amended several times. Ordinance 371, enacted April 22, 1985 (see excerpts in Appendix E to Sandpiper's Petition at E26-33 and additional excerpts, Respondent's Appendix ("RA") at A1) readopted and extended the ordinance until June 30, 1990. Later amendments include Ordinance 388, enacted February 10, 1986 (the last restatement of the entire ordinance), Ordinance 419, enacted October 26, 1987 (see excerpts RA at A2), and Ordinance 450, enacted August 28, 1989 which extended the effect of Chapter 5.69 "until the vacancy factor in mobilehome parks in the City rises to three percent, or more for a period of one year."

At the time of its construction Sandpiper was located outside Carpinteria and subject to the jurisdiction of in the County of Santa Barbara. In 1979 the County of Santa Barbara enacted Ordinance 3122 establishing mobilehome rent stabilization.[2] The County Ordinance, like Carpinteria's, provided no exception from rent regulation merely because a mobilehome was transferred from one homeowner to another.

In 1987, Carpinteria annexed Sandpiper into the City of Carpinteria. As a result it became subject to the provisions of the Carpinteria Ordinance.

B. Procedural History

1. The State Superior Court Ruling

On July 21, 1989, *without first requesting any rent increase other than the automatic 75% of the CPI* under the City Ordinance, Sandpiper filed a Complaint in the Santa Barbara Superior Court. Primarily relying on *Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1986), *cert. denied*, 485 U.S. 940, 108 S.Ct. 1120, 99 L.Ed.2d 281 (1988), Sandpiper alleged that because the Ordinance did not permit it to automatically increase rents whenever a mobilehome was sold on site, the Ordinance constituted a "taking" of its property, was irrational and served no legitimate governmental purpose.[3]

---

[2]Ordinance 3122, enacted October 22, 1979, added Chapter 11A to the Santa Barbara County Code. Similar to the later adopted Carpinteria Ordinance it generally limited rent increases to 75% of the increase in the CPI (sec. 11A-6) and also gave the parkowner an opportunity to seek additional rent increases to obtain a "just and reasonable return." Sec. 11A-5. It also was amended several times. The version in effect when Sandpiper was annexed to the City of Carpinteria was Ordinance 3589 enacted October 6, 1986.

[3]Although Sandpiper's original Complaint referred to takings only under the California Constitution, Article I, sec. 19, in subsequent pleadings and arguments both at the trial and appellate levels, it clearly indicated that it was also alleging takings and substantive due process violations under the Fifth and Fourteenth Amendments to the United States Constitution.

On December 4, 1989, the Honorable Ronald C. Stevens, Judge of the Santa Barbara Superior Court, issued a Memorandum of Intended Decision overruling the City's Demurrer to the Complaint. However, following the state court of appeal decision in *Yee v. City of Escondido*, 224 Cal.App.3d 1349, 274 Cal.Rptr. 551 (1990), and a new motion by City, on March 19, 1991 the Honorable Bruce Wm. Dodds, Judge of the Santa Barbara Superior Court entered an Order granting Judgment on the Pleadings. See, Petition at D24-25.

2. The State Court of Appeal Decision

On May 9, 1991, Sandpiper filed a Notice of Appeal with the state Court of Appeal. At oral argument the parties informed the Court of Appeal that the United States Supreme Court had granted certiorari in *Yee*, that *Yee* had been orally argued on January 22, 1992, and that the Supreme Court's decision in *Yee* could well be dispositive of the appeal. Thereafter, the Court of Appeal issued an Order taking the matter off calendar pending the Supreme Court ruling in *Yee*.

On April 1, 1992, the United States Supreme Court decided *Yee v. City of Escondido*, 503 U.S. ____, 112 S.Ct. 1522, 118 L.Ed.2d 153 (1992) unanimously affirming the state Court decision, and rejecting the *Hall* physical taking analysis. See, *Yee, supra,* 118 L.Ed.2d at 164-68. The Court also examined substantive due process and regulatory taking challenges but did not pass on either. *Id.* at 168-72.

After *Yee* the Court of Appeal in *Sandpiper* authorized supplemental briefing and oral argument on the "regulatory taking" issue.

On October 15, 1992, in a decision reported as *Sandpiper Mobile Village v. City of Carpinteria*, 10 Cal.App.4th 542, 12 Cal.Rptr.2d 623 (1992) (see also Slip Opinion, Petition at A1-21), the Court of Appeal affirmed. It held that Carpinteria's Ordinance (1) does not constitute a physical taking of Sandpiper's property (*Id.* at 547), (2) is rational and serves a legitimate public purpose and therefore does not violate substantive due process (*Id.* at 547-548), and (3) on its face validly regulates

mobilehome rent. The Court did not consider any regulatory taking claim "as applied" because Sandpiper had not alleged "that it has attempted to change the use of the park or to apply for rent increases." *Id.* at 549.

3. The California Supreme Court's Denial of Review

On November 17, 1992, Sandpiper filed a Petition for Review with the California Supreme Court. On January 19, 1993, the California Supreme Court denied Sandpiper's request for review. See Ruling, Petition at B-22.

WHY THIS WRIT SHOULD BE DENIED

I

THE LOWER COURT'S DECISION IS CONSISTENT WITH THIS COURT'S DECISION IN YEE AND OTHER CALIFORNIA RENT CONTROL CASES

While Sandpiper's Petition never specifically referred to this Court's decision in *Yee v. City of Escondido*, *supra*, 118 L.Ed.2d 153, it is apparent that Sandpiper interprets that decision as supporting its regulatory taking argument. See, Petition, i (Questions Presented). In fact, the lower court's decision is totally consistent with *Yee*.

In *Yee*, this Court considered a very similar challenge to another city's mobilehome rent review ordinance. There the parkowner also alleged that the Ordinance constituted a taking because it did not permit a parkowner to automatically raise rents when a mobilehome was sold or transferred. 118 L.Ed.2d at 164-165.

On April 1, 1992, this Court in a unanimous opinion by Justice O'Connor held that Escondido's Ordinance, even when considered against the backdrop of the California Mobilehome Residency Law (Cal. Civil Code sec. 798 et seq.) did not constitute a "physical taking" of the parkowner's property. *Yee*, *supra*, 118 L.Ed.2d 153.

Since this was the first time that the Supreme Court had ever considered a mobilehome case the Court's statements are illumi-

nating. First, it acknowledged that "mobilehomes are largely immobile as a practical matter." 118 L.Ed.2d at 162. Second, it recognized that California had enacted the Mobilehome Residency Law in recognition of the unique problems of and need to protect mobilehome residents. 118 L.Ed.2d at 163. Third, it noted that while the Mobilehome Residency Law provides several protections it does not put limits on rents; to close this gap, several communities had adopted mobilehome rent control ordinances. 118 L.Ed.2d at 163.

Yee argued that as a result of the lower rents under the Escondido ordinance, the value of the mobilehomes would increase and that when the current occupant sold the mobilehome, he/she would receive a "premium" corresponding to this increase in value. *Ibid.* However, this Court indicated, even assuming the above allegations were true, the ordinance would not constitute a "physical taking" because nothing in Escondido's ordinance or the Mobilehome Residency Law required the parkowner to submit to the physical occupation of its land. 118 L.Ed.2d at 165-67.[4]

After thus rejecting the *Hall* "physical taking" analysis, this Court also examined Yee's "substantive due process" and "regulatory taking" challenges. 118 L.Ed.2d at 168. As to the due process claim, this Court concluded that since the issue had not been raised or decided below "we will not consider it here." 118 L.Ed.2d at 169.

Finally, the Court addressed Yee's "regulatory taking" claim. Earlier in the opinion, the Court had noted that Yee's allegations that the only person benefitting from the ordinance was the current mobilehome owner "might have some bearing on whether the ordinance was a *regulatory* taking because it might shed some light on whether there is a significant nexus between the effect of the ordinance and the objectives it is supposed to advance."

---

[4]In so doing the Court disapproved two prior Federal Circuit Court cases (*Hall v. City of Santa Barbara*, *supra*, and *Pinewood Estates of Michigan v. Barnegat Township Leveling Board*, 898 F.2d 347 (3rd Cir. 1990). See, 118 L.Ed.2d at 164.

118 L.Ed.2d at 167.[5] However, when faced with the "regulatory taking" claim this Court chose not to decide that issue. Instead, it construed its grant of certiorari as only addressing the "physical taking" issue and decided "to leave the regulatory taking issue for the California courts to address in the first instance." 118 L.Ed.2d at 172.

Far from being inconsistent with *Yee*, the Court of Appeal decision in *Sandpiper* is clearly the type of state court action anticipated by this Court. The fact that this Court indicates that a certain set of facts might be relevant to a regulatory taking claim does not mean that upon further inquiry it will in fact state such a cause of action. See, e.g., *First English Evangelical Lutheran Church v. County of Los Angeles*, 210 Cal.App.3d 1353, 258 Cal.Rptr. 893 (1989), *cert. denied*, 493 U.S. 1056, 110 S.Ct. 866, 107 L.Ed.2d 950 (1990) (On remand from United States Supreme Court, which had held that a landowner is entitled to compensation — not merely injunctive relief — when a court finds there has been a unconstitutional regulatory taking, the state Court sustained dismissal of a regulatory taking claim for failure to state a claim because the regulation did not constitute a taking of all use of the landowner's property). In *Sandpiper* the Court of Appeal directly considered whether this type of ordinance constituted a regulatory taking and correctly concluded that no "taking" was involved because the City had not denied the parkowner all "economically viable use of [the] land" (*Sandpiper*, 10 Cal.App.4th at 550) and because the ordinance "substantially advances a legitimate state interest." *Id.* at 551.

Prior California decisions are also consistent with *Sandpiper*. In *Oceanside Mobilehome Parkowners' Ass'n v. City of Oceanside*, 157 Cal.App.3d 887, 906-07, 204 Cal.Rptr. 239 (1984), it was argued that the combined effect of the Mobilehome Residency

---

[5]The Court also mentioned that the extent to which the ordinance deprived petitioners of the ability to choose incoming tenants may also be relevant to a regulatory taking argument. 118 L.Ed.2d at 167. Justices Blackmun and Souter, while concurring in the Court's decision, did not join in the references to the relevance of Yee's claims to a regulatory taking. See, 118 L.Ed.2d at 172-73.

Law (Civil Code sec. 798, et seq.) and the Oceanside Mobilehome Rent Control Ordinance allowed the tenants to sell their homes for a premium, thereby transferring the increase in value from the owner to the tenant and thus violating the parkowner's rights under the "taking" clauses of the Fifth and Fourteenth Amendments and sections 1 and 19 of Article I of the California Constitution.

In rejecting these arguments, the Court stated:

> The ordinance is structured to establish a base rent which reflects general market conditions and incorporates relevant pricing factors. Rents will not be "reduced more than required for the purposes of the police power."

157 Cal.App.3d at 907.

The *Oceanside* Court correctly understood that the proper focus of inquiry for determining whether there is a "taking" is not the price received by the homeowner for his home, but the rent allowed the parkowner. If the rent permitted is "just and reasonable" then there is no "taking" because the parkowner has received all he is due.

The *Oceanside* Court also recognized that, due to the "realities of a captive market" and "the proprietary interests mobile homeowners have individually and cumulatively in their homes", the ordinance has a legitimate purpose in protecting the value of the homeowner's equity interest in their homes. See, 157 Cal.App.3d at 911 n.9.

In *Yee v. City of Escondido, supra*, 224 Cal.App.3d 1349, the state Court of Appeal, in affirming a dismissal, expressly rejected taking challenges to an ordinance which did not permit a parkowner to automatically raise rents merely because a mobilehome was sold or transferred. The Court pointed out that:

> [p]laintiffs' complaints never allege the Escondido ordinance is irrational because it denies them fair and reasonable rents. Indeed, the owners have never attempted to obtain Escondido's approval for what they consider to be a 'fair' rent. In the absence of such a contention, we assume the rents provided for by the ordinance are fair. If they are, there is no

> 'taking.' The fact that used mobilehomes in Escondido are selling for more than they have in the past is irrelevant.

224 Cal.App.3d at 1354.

The *Yee* Court of Appeal decision clearly indicated that it believed the ordinance to be "rational" and that under the circumstances the decision whether to use rent control was "a political issue for legislative action and not a question of constitutional law for the courts." *Yee*, 224 Cal.App.3d at 1358.

In *Casella v. City of Morgan Hill*, 230 Cal.App.3d 43, 57, 280 Cal.Rptr. 876 (1991), *cert. denied*, ____ U.S. ____ , 112 S.Ct. 1665, 118 L.Ed.2d 387 (1992), another state Court of Appeal, when faced with the same question, concluded:

> The stated purpose of the city's ordinance is to control excessive rental prices for the largely fixed-income residents of mobilehome parks. This is unquestionably a legitimate state interest. The City of Morgan Hill could reasonably have concluded that the mobilehome rent control ordinance would promote this goal. Whether as a means to achieve its stated purpose rent control is a good idea is a political decision — one which properly rests with the legislative branch of government. We agree with Yee that this is "not a question of constitutional law for the courts. [citation]"

230 Cal.App.3d at 57.[6]

---

[6]See also, *Casella*, *supra*, 230 Cal.App.3d at 57, agreeing with the *Hall* dissenters that "'[s]ignificant doubt' as to whether a legislative body's goals are in fact achieved is not sufficient to warrant striking down an ordinance[] . . . Legislation passes muster if the legislature reasonably could have concluded that its action would promote a legitimate state interest. The judiciary does not have the power to sit as a 'superlegislature' second-guessing the wholly economic regulations of state and local governments." (833 F.2d at 1284 [citations omitted], Schroder, J. dissenting from the denial of en banc hearing).

II

THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED SANDPIPER'S TAKING CLAIMS

Sandpiper bases its argument for granting this Writ of Certiorari on the allegation that the State Court of Appeal decision is "in error." Petition at 11. Sandpiper's argument is without merit.

A. The Court Below Correctly Ruled That Carpinteria's Ordinance Does Not Constitute A Physical Taking

This Court in *Yee* concluded:

> The Escondido rent control ordinance, even considered against the backdrop of California's Mobilehome Residency Law, does not authorize an unwanted physical occupation of petitioners' property. It is a regulation of petitioners' *use* of their property, and thus does not amount to a per se taking.

118 L.Ed.2d at 168.

Basing its decision on this Court's *Yee* ruling, the Court of Appeal discussed Sandpiper's various physical taking contentions and correctly concluded that "Sandpiper, like *Yee*, fails to establish a physical taking because there has simply been no compelled physical occupation giving rise to a right to compensation . . . " *Sandpiper*, *supra*, 10 Cal.App.4th at 547.

B. The Court Below Correctly Ruled That Any As Applied Regulatory Taking Claim Is Not Ripe

This Court has generally declined to address the merits of "takings" claims in cases in which the government had not yet reached a final decision concerning the application of its regulations to the property at issue. For example, in *Pennell v. City of San Jose*, 485 U.S. 1, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988), appellants contended that San Jose's rent control ordinance, which allowed a hearing officer to consider the "hardship to a tenant" when determining whether to approve a proposed rent increase, was facially unconstitutional. This Court declared the claim premature because San Jose had made no authoritative determination as to how the regulations would be applied; i.e.,

"there [was] simply no evidence that the 'tenant hardship clause' ha[d] in fact ever been relied upon by a hearing officer to reduce a rent below the figure it would have been set at on the basis of the other factors set forth in the Ordinance." 485 U.S. at 9-10.

Prior to this lawsuit, Sandpiper did not seek a rent adjustment under the Ordinance and thus no final decision concerning the application of the Ordinance to its property was before the lower court. By failing to seek relief in the manner provided by the Ordinance, Sandpiper failed to provide the City with an opportunity to negotiate an agreement — viz., an acceptable rent increase—that might obviate any perceived constitutional deficiencies in the City's rent control scheme. Moreover, without knowing what rents the City will permit Sandpiper to charge, the lower court could do no more than speculate about the economic impact — if any — of the Ordinance on Sandpiper's property or the extent to which it interferes — if at all — with Sandpiper's investment-backed expectations. Consequently, any "as applied" regulatory challenge is entirely unripe. See, *Yee*, *supra*, 118 L.Ed.2d at 169; see also, *Williamson County Regional Planning Comm. v. Hamilton Bank*, 473 U.S. 172, 186-197, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

Under the circumstances, the *Sandpiper* Court of Appeal correctly ruled "Because Sandpiper has not alleged that it has attempted to change the use of its park or to apply for rent increases, its regulatory taking claim is not ripe." 10 Cal.App.4th at 549.[7]

---

[7]Since any applied regulatory taking claim was clearly unripe it was unnecessary for the Court below to discuss the constraints of "as applied" regulatory takings pursuant to *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978). Had it done so, the inquiry should have been relatively quick. At the time it was annexed to the City in 1987, Sandpiper had already been subject to a virtually identical County ordinance for the past eight years. Therefore it is extremely difficult to imagine how "its distinct investment backed expectations" (see, 438 U.S. at 124) could have been further impacted or interfered with by the same provisions in the City Ordinance.

C. The Court Below Correctly Ruled That Sandpiper's Facial Regulatory Claim was Meritless

After noting that Sandpiper's *Complaint* did not set forth a facial regulatory taking challenge, the lower court nevertheless considered Sandpiper's argument [first set forth in its Supplemental Brief to the Court of Appeal (after the United States Supreme Court decided *Yee*)] that "the ordinance does not substantially advance a legitimate governmental interest no matter how the ordinance is applied." *Sandpiper*, *supra*, 10 Cal.App.4th at 549.

The Court of Appeal properly ruled that Sandpiper's facial regulatory taking challenge fails because the ordinance neither deprives Sandpiper of all economic use of its property nor fails to substantially advance legitimate state interests.[8]

---

[8]An alternative ground which supports the dismissal of Sandpiper's federal facial regulatory taking claim is that it was barred by applicable statutes of limitations. Although City raised statutes of limitation as an affirmative defense in its answer, and at the Appellate level in both its Respondent's Supplemental Brief and Answer to Petition for Review, the Court of Appeal only addressed the applicability of state statutes of limitation to Sandpiper's *state* taking claims. See *Sandpiper*, *supra*, 10 Cal.App.4th at 549 (finding Sandpiper's state taking claim not barred because brought within five years of the enactment of Ordinance 371). Nevertheless, the law is clear that Sandpiper's federal taking claim arises when the ordinance is enacted. See, *De Anza Properties X Ltd. v. County of Santa Cruz*, 936 F.2d 1084, 1087 (9th Cir. 1991); *Azul Pacifico v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992), *cert. denied*, ____ U.S. ____, 113 S.Ct. 1049, 122 L.Ed.2d 357 (1993). In addition, to be timely such a federal claim must be brought under 42 U.S.C. sec. 1983 which is subject to a one year statute. *De Anza*, *supra*, 936 F.2d at 1084-85, *Azul*, *supra*, 973 F.2d at 705. Here Sandpiper became subject to the City's Ordinance in 1987 and did not file this suit until July 1989. As a result its federal regulatory claim is clearly barred on statute of limitations grounds also.

1. Carpinteria's Ordinance Does Not Deprive Sandpiper Of All Economic Use Of Its Property.

In *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 495, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987), this Court stated:

> The test to be applied in considering this facial challenge is fairly straightforward. A statute regulating the uses that can be made of property effects a taking if it 'denies an owner economically viable use of his land. [citation]'
>
> Petitioners thus face an uphill battle in making a facial attack on the Act as a taking.

See also, *Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980) (Unless the regulatory ordinance denies the property owner substantially all economically "viable use of land" there is no compensable taking); *Lucas v. South Carolina Coastal Council*, 505 ____ U.S. ____, 112 S.Ct. 2886, 120 L.Ed.2d 798, 813 (1992) (A regulation which denies "all economically beneficial or productive use of land" is a taking).

Clearly, Sandpiper is not denied all economic use of its property because it can and does receive rents.

The only "right" Sandpiper has lost is the "right" to extract excessive rents from mobilehome owners due to the shortage of mobilehome spaces and the immobility of mobilehomes. This "right" is not a separate, legally protected interest in property. Cf. *Block v. Hirsch*, 256 U.S. 135, 157, 41 S.Ct. 458, 65 L.Ed. 865 (1921) (Court upheld law providing "reasonable rent" while depriving landlords of the right to "profit by the sudden influx of people to Washington").

Even assuming that the right to use its property in this manner was a discrete and legally protected "property interest," Sandpiper's facial regulatory takings claim still fails. As the United States Supreme Court has explained:

> 'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In decid-

> ing whether a particular governmental action has effected a taking, this Court focuses rather both on the character of the action and on the nature of the interference with rights *in the parcel as a whole.* . . .

Keystone, supra, 480 U.S. at 497 (quoting *Penn Central, supra*, 438 U.S. at 130-31) (emphasis in original). Thus, "where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking because the aggregate must be viewed in its entirety." *Keystone, supra*, 480 U.S. at 497 (quoting *Andrus v. Allard*, 444 U.S. 51, 65-66, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979)). This standard entirely undermines Sandpiper's attempted regulatory challenge: Sandpiper continues to rent its property and remains free to sell its property or to put it to alternative uses should it wish to do so.

2. On Its Face, The Ordinance Substantially Advances Legitimate State Interests.

Relying on *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), Sandpiper also argues that Carpinteria's Ordinance effects a regulatory taking because it fails to substantially advance a legitimate governmental interest. Petition at 11. This assumes the *Nollan* test applies to regulatory takings. But see, *Casella v. City of Morgan Hill, supra*, 230 Cal.App.3d at 57 (The Court quoted from Manheim, "*Tenant Eviction Protection and the Takings Clause*," 1989 Wisc. L. Rev. 925, and indicated that the *Nollan* heightened scrutiny approach may be limited to possessory taking cases.).[9]

---

[9]Other state and federal California Courts have also held that the heightened scrutiny of the *Nollan* test applies only to unconstitutional conditions and possessory takings, not regulatory takings. See, e.g., *Blue Jeans Equities West v. City and County of San Francisco*, 3 Cal.App.4th 164, 169-170, 4 Cal.Rptr.2d 114 (1992), *cert. denied*, ___ U.S. ___, 113 S.Ct. 191, 121 L.Ed.2d 135 (1992) (Heightened scrutiny test did not apply to imposition of development fee on owner and developer); *Commercial Builders of Northern California v. City of Sacramento*, 941 F.2d 872, 874 (9th Cir. 1991), *cert. denied*, ___ U.S., ___ 112 S.Ct. 1997, 118 L.Ed.2d 593 (1992) (Same).

According to Sandpiper, departing homeowners are able to capture the full value of the rent protection in the premium that attaches to their mobilehomes. Sandpiper is wrong. As discussed *infra*, the Ordinance protects both current homeowners and future homeowners.

a. *Carpinteria's Ordinance Protects Current Homeowners From Excessive Rent Increases And Protects The Investment In Their Homes.*

The Ordinance substantially advances Carpinteria's perfectly legitimate goal of protecting *current* homeowners from escalating rent increases.

Furthermore, mobilehome owners have a substantial investment in their homes. See, e.g., Baar, "*The Right to Sell The 'Im' Mobile Manufactured Home in its Rent Controlled Space in the 'Im' Mobile Home Park: Valid Regulation or Unconstitutional Taking*?" 24 Urban Lawyer 157, 159 & nn. 10, 12 (1992) ("In California, mobilehome prices ranging from $50,000 to $100,000 are standard. . . . [a Los Angeles survey indicated that] on the average mobilehome owners have triple the investment of parkowners in their spaces."). See also, *Oceanside Mobilehome Parkowners' Ass'n v. City of Oceanside, supra*, 157 Cal.App.3d at 911 n.9 (Local ordinance recognized that "[c]ollectively, the manufactured home owners have a greater investment than does the manufactured home parkowner").

In the absence of protection against rent increases on transfer, a parkowner could force a current homeowner to sell his/her home at distressed sales prices thereby jeopardizing his/her investment. For example, it is illuminating to note what occurred in the Hall park after the City of Santa Barbara repealed vacancy control. Almost immediately Mrs. Hall informed certain park residents that she was going to raise rent on any transfer by $250 to $300 per month.

The results as reported by Mrs. Hall's attorney, Mr. Jagiello, were:

> . . . in the Hall park over the last two years, not one coach has sold, although many are for sale, but for the exception of

> a coach that sold two weeks ago for one dollar. There were attempts to give coaches away to charities and they wouldn't take them. There is no market for coaches in Santa Barbara." See, Administrative Record to *Palomar Estates East v. City of San Marcos*, San Diego Superior Court No. N48882, April 9, 1990 Hearing Transcript at 7.

Although prior to this Court's decision in *Yee, supra*, the Ninth Circuit had followed *Hall, supra*, it had nevertheless recognized the potential dangers of not regulating rents when mobilehomes were transferred. See, *Azul v. City of Los Angeles*, 948 F.2d 575 (9th Cir. 1991), *opinion withdrawn on rehearing in light of Yee*, 973 F.2d 704 (9th Cir. 1992), where that Court had admitted:

> [T]he ordinance does protect existing tenants from being forced to sell their coaches at distress-sale prices in the event landlords were to set rents for new tenants so high that no one would want to buy the coach. See 740 F.Supp. at 780 ("Based on testimony from mobile home tenants, the City found that, without vacancy control, it would be virtually impossible for tenants to sell their homes on the pad because landlords could raise the rent to a level that prospective buyers could not afford."). The correctness of the city's decision to insure coach owners against unscrupulous landlords in this way is a legislative question, not a judicial one. "[The Supreme] Court has consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular." *Loretto*, 458 U.S. at 440, 102 S.Ct. at 3178. Because the vacancy control provision serves the same governmental purpose — protecting incumbent tenants — as the RSO we cannot say that it is unconstitutional. Unlike the city's other rationales, this one falls within the traditional police power and thus there is a sufficient nexus between the challenged provision

> and a legitimate justification. See *Nollan*, 483 U.S. at 837, 107 S.Ct. at 3148.

948 F.2d at 583.[10]

b. *The Ordinance Protects Future Homeowners In The Same Way.*

The principal thrust of Sandpiper's argument is that the Ordinance is irrational because it does not protect purchasers from increases in the prices they must pay for their homes.[11] But see, *Casella, supra*, which pointed out:

> As *Yee* and others have pointed out, the increase in the sales prices of mobilehomes resulting from rent control may simply reflect the artificially low price caused by excessive rents charged prior to its enactment. The mere fact that increased coach prices are a corollary to rent control does not establish that a taking has occurred, however. [Citation]

230 Cal.App.3d at 54.

Even if the constitutionality of the Ordinance did turn on the narrow question of whether it benefits future homeowners, the Ordinance would withstand scrutiny even under the *Nollan* standard because it substantially advances the City's interest in protecting these individuals. The Ordinance protects these future

---

[10]It is clear that in the absence of rent restrictions when a mobilehome is sold or transferred certain parkowners would attempt to raise their new rent to "all the market can bear." Thus, a homeowner who in good faith invested in a home, recognizing the reality that the home could not be moved, could be faced with the prospect of losing the value of his or her investment or remaining a captive in the mobilehome park.

Unless homeowners and their lenders are assured that the value of a home will remain relatively stable, the mobilehome market will evaporate, investments will be lost, and a legitimate affordable housing option will be removed.

[11]Initially it is interesting to note that it is the parkowners, not the future homeowners, who argue that the Ordinance fails to protect future homeowners. This fact alone should give a Court pause before finding that such future homeowners are not benefitted.

homeowners, just as it protects current homeowners, by preventing parkowners from charging excessive rents. This is by itself, a legitimate state interest. Furthermore, future homeowners, no less than current homeowners, in the absence of rent protection, might be forced to sell their homes at distress sale prices (*Azul, supra*), and the City has a legitimate interest in protecting the investments that these future homeowners make.

In addition, the Ordinance provides future homeowners a less obvious, but ultimately no less important benefit — a significant degree of financial stability. Many mobilehome homeowners are either senior citizens living on fixed incomes or young families struggling to pay for their first home. In either case, they need protection against excessive rent increases. In the absence of rent protection, such purchasers would have no way of planning for potentially exorbitant rent increases that could wreak havoc with their budgets and destroy the value of their investments in their homes.[12]

In sum, the investments of future as well as current homeowners will be protected both from immediate extinguishment by higher rents immediately following their purchase, and later extinguishment caused by higher rents immediately following their later sale. As a result, it is likely that future mobilehome owners will be more willing to invest in the maintenance and improvement of their mobilehomes; lenders will be more willing to finance mobilehome purchases; mobilehome living will continue to be a legitimate affordable housing option.

---

[12]In arguing that only current homeowners benefit from the Ordinance because the alleged "premium" paid by the future homeowners exactly equals their savings in rent, Sandpiper ignores these benefits that the Ordinance clearly does afford future homeowners. Moreover, Sandpiper's assumption that current homeowners can extract the full value of future rent savings is questionable at best. At the time of sale, uncertainty about a number of factors — not the least of which would be the number and size of future Board-approved rent increases — would make an accurate calculation of future rent savings virtually impossible. In addition, Sandpiper's theory assumes that individual homeowners have sufficient market power to extract a "premium" from future purchasers.

Certainly the City of Carpinteria could reasonably conclude, as have dozens of other communities,[13] that mobilehome parkowners could do more harm to the public interest by charging excessive rents to essentially captive homeowners than individual homeowners could do by requesting excessive prices for their homes. Cf., *Eamiello v. Liberty Mobile Home Sales, Inc.*, 208 Conn. 620, 546 A.2d 805, 820 (1989), *appeal dismissed*, 489 U.S. 1002, 109 S.Ct. 1104, 103 L.Ed.2d 169 (1989), which in upholding the right of a mobile home owner to sell his home on site stated:

> In choosing the tenant rather than the mobile home park operator as the recipient of this economic advantage arising from the near-monopoly status of the industry, the legislature, by allocating its benefit to those who generally are more in need, has not violated any constitutional principle. In our view, [the statute] strikes a reasonably fair balance between the economic interests of mobile home tenants and those of mobile home park operators.

In any event, the choice of solutions belongs to the City. This Court has long ago decided that the wisdom of laws are for those elected to pass laws; the courts "do not sit as a superlegislature" to reweigh those decisions in their own scales of justice. *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423, 72 S.Ct. 405, 96 L.Ed. 469 (1952). As Justice Black wrote in *Ferguson v. Skrupa*, 372 U.S. 726, 732, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963), "[w]hether the legislature takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes" — or George Stigler, James Buchanan, John Kenneth Galbraith or any other economist, for that matter — "is no concern of ours." It is respectfully submitted that nothing authorizes this Court to substitute its judgment for that of the City as to how best to protect current and future homeowners' significant investment in their homes and to protect mobilehome living as an affordable housing option.

---

[13]According to a July 1, 1992 report by WMA (Western Mobilehome Parkowner's Association) approximately 50 California jurisdictions provide full or partial rent regulation when a mobilehome is sold or transferred.

III

THE COURT BELOW FULLY CONSIDERED AND CORRECTLY DECIDED THAT CARPINTERIA'S ORDINANCE DOES NOT VIOLATE SUBSTANTIVE DUE PROCESS

Sandpiper argues that the Ordinance is irrational because its regulations on rent when mobilehomes are transferred do not advance a legitimate governmental purpose. Sandpiper's argument is without merit.

As the *Sandpiper* Court correctly pointed out, the Carpinteria Ordinance seeks to remedy an inequitable market situation caused by the scarcity of mobilehomes. The Ordinance protects mobilehome owners from unreasonable space rental increases, therefore protecting the homeowners' investments, while providing parkowners with a reasonable return on the parkowner's investment. *Sandpiper*, 10 Cal.App.4th at 551.

In *Pennell v. City of San Jose*, *supra*, 485 U.S. at 12-14, this Court *rejected* a similar contention that "[t]he objective of alleviating individual tenant hardship is . . . not a policy that the legislature is free to adopt in a rent control ordinance." The Court pointed out that "we have long recognized that a legitimate and rational goal of price or rate regulation is the protection of consumer welfare." *Id.* at 13.

Both the United States and California Supreme Courts have previously held rent control to be a reasonable and legitimate means of addressing problems related to scarcity in real property and the high rents resulting from inequities in bargaining power. See, *Block v. Hirsch*, *supra*, 256 U.S. at 157 (Rent control approved as a method to prevent excessive profits for landlords); *Carson Mobilehome Parkowners Ass'n v. City of Carson*, 35 Cal.3d 184, 189 n.4, 197 Cal.Rptr. 284 (1983) (The imposition of mobilehome rent controls is a rational curative measure designed to counteract the ill effects of a "shortage of mobilehome spaces which has resulted in a low vacancy rate and rapidly rising space rents."); cf. *Nash v. City of Santa Monica*, 37 Cal.3d 97, 104-109, 207 Cal.Rptr. 285 (1984), *app. dism.*, 470 U.S. 1046, 105 S.Ct. 1740, 84 L.Ed.2d 807 (1985) (A rent control ordinance which required a predemolition permit before a landlord could demolish

rental units was held to be reasonably related to the legitimate goal of maintaining adequate rental housing); *Fisher v. City of Berkeley*, 37 Cal.3d 644, 700-702, 209 Cal.Rptr. 682, *affirmed on other grounds*, 475 U.S. 260, 106 S.Ct. 1045, 89 L.Ed.2d 206 (1986) (Provision of rent control ordinance which permitted tenant to withhold the full amount of his rent if landlord failed to register was reasonably related to its purpose).

The Ninth Circuit has agreed even in cases which otherwise followed *Hall*. For example, in *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991), *vacated*, ____U.S. ____, 113 S.Ct. 31, 121 L.Ed.2d 4 (1992), the Ninth Circuit stated:

> [T]he City council could reasonably believe that in the majority of cases the ordinance serves the valid public purpose of keeping mobile home rent from becoming prohibitively high. (Citation) How well the ordinance serves this purpose is a legislative question, one the court will not consider.

Id. at 958.

See also, *Schnuck v. City of Santa Monica*, 935 F.2d 171 (9th Cir. 1991), wherein the Court upheld the City's rent control ordinance against a substantive due process attack noting that "the Supreme Court has upheld numerous constitutional challenges to rent control laws" (see, 935 F.2d at 174 n.1). The *Schnuck* Court stated that questions as to whether Santa Monica had a legitimate governmental purpose for enacting rent control generally should be left to the local legislature or the voters (*Id.* at 175), and dismissed arguments that the Ordinance did not substantially advance its "purpose" by pointing out that the ordinance's "purposes" were not to be as narrowly defined as the landlord wished.

CONCLUSION

Sandpiper's Petition for Certiorari at times reads more like an economic or political treatise than a legal brief. Time and time again it asks the Court to base legal conclusions on its version of

"mobilehome economics."[14] Time and time again it asks this Court to second guess the City's determination (see Ordinance 371, sec. 1, RA A-1) that its Ordinance has been "effective" and "beneficial". Since both issues involve legislative not judicial determinations this Court should decline the invitations.

Under the circumstances City respectfully submits that the Court should deny Sandpiper's Petition seeking review of the taking and due process decisions of the state court because it is clear that these decisions were properly made.

DATED: March 31, 1993

Respectfully submitted,

DONALD R. LINCOLN
(Counsel of Record)

LINDA B. REICH
ENDEMAN, LINCOLN,
TUREK & HEATER
PETER BROWN, *City Attorney*
THOMAS WISE,
Deputy City Attorney
Hatch & Parent

Attorneys for Respondent
City of Carpinteria

---

[14]For example, it first contends that mobilehomes are "wasting assets," which depreciate in value (Petition at 17), but see, Nutt-Powell, *"Manufactured Homes, Making Sense of a Housing Opportunity"* (Auburn House Publishing Co., Boston, Mass. 1982) (Pointing out that the historical view that mobilehomes depreciate like used cars has been abandoned due to "mounting evidence that mobilehomes appreciate rather than depreciate in value"). Although Sandpiper later admits that "mobilehomes, in place in a Park, can frequently rise in price" (Petition at 17), it contends all the appreciation belongs to the parkowner, who owns the underlying land. *Id.* at 17-18. But see, *Casella, supra*, 230 Cal.App.3d at 55 (Pointing out that California property law considers leasehold value the property of the tenant, not the landlord); see also, *Kendall v. Ernest Pestana*, 40 Cal.3d 488, 504, 220 Cal.Rptr. 818 (1985) (Rejecting the assertion that any increase in market value of real property during the term of the lease belongs to the lessor not the lessee).

APPENDIX A

ORDINANCE NO. 371

AN ORDINANCE OF THE CARPINTERIA CITY COUNCIL RE-ADOPTING AND EXTENDING CHAPTER 5.69, AS AMENDED, OF THE CARPINTERIA MUNICIPAL CODE RELATING TO MOBILE HOME PARK RENT STABILIZATION, FOR AN ADDITIONAL FIVE-YEAR PERIOD

(Excerpt)

SECTION 1

WHEREAS, the Carpinteria City Council originally adopted, by Ordinance 287, on March 10, 1980, a Mobile Home Park Rent Stabilization program; and

WHEREAS, said Ordinance 287 added Chapter 5.69 to the Carpinteria Municipal Code and has subsequently been amended for purposes of clarification; and

WHEREAS, said Chapter 5.69 of the Carpinteria Municipal Code has proven to be an effective and beneficial program for the people of Carpinteria; and

WHEREAS, Section 5.69.160 of said Chapter 5.69 provides that said chapter shall expire on June 30, 1985, unless extended by the City Council; and

WHEREAS, the Carpinteria Mobile Home Park Rent Stabilization Board has recommended that said rent stabilization program be extended for an additional five year period to June 30, 1990; and

WHEREAS, this City Council finds that it is in the public interest to extend and continue said Chapter 5.69 of the Carpinteria Municipal Code.

NOW THEREFORE, THE CARPINTERIA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

ORDINANCE NO. 419

AN ORDINANCE OF THE CARPINTERIA CITY COUNCIL AMENDING THE CARPINTERIA MUNICIPAL CODE, AS AMENDED BY AMENDING SECTIONS 5.69.040 AND 5.69.070, RELATING TO MOBILE HOME PARK RENT STABILIZATION

(Excerpt)

SECTION 1

Section 5.69.040 of the Carpinteria Municipal Code, as amended, is hereby further amended to read as follows:

. . .

C. *Formula for Mobile Home Parks Annexed into the City on or after January 1, 1987.* Except as otherwise expressly provided in this chapter, the maximum rent for each mobile home space that management of a mobile home park in this category shall be permitted to charge shall be set forth in an effective rent schedule as follows:

The maximum allowable rent shall be calculated annually and shall be the sum of the following:

1. The November 1, 1987 rent; and

2. The November 1, 1987 rent times 75% of the ratio of change in the Consumer Price Index (CPI).

D. *Effective Rent Schedule for Annexed Mobile Home Parks.* Annually and as soon as practical after the release of the C.P.I. for March of each year and using the July 1, 1987 rent schedules previously filed by each annexed mobile home park, the city manager shall make the calculations for each such mobile home park, as provided by Paragraph C of Section 5.69.040 and shall file same in the City Clerk's Office as a rent schedule and mail a copy of the applicable rent schedule to the management of each such mobile home park, specifying the maximum rent for each mobile home space. The rent schedule, if filed before July 1 of that year shall become effective as of July 1 of that year or, if not filed until after July 1, shall become effective as of filing.